

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 09-PM-11419-DFM
	)	
<b>VALERIE CANDICE WHITWORTH,</b>	)	
	)	<b>ORDER GRANTING MOTION</b>
<b>Member No. 94581,</b>	)	<b>TO REVOKE PROBATION &amp;</b>
	)	<b>ORDER OF INACTIVE ENROLLMENT</b>
A Member of the State Bar.	)	
_____	)	

**1. Introduction**

In this probation revocation proceeding, respondent **VALERIE CANDICE WHITWORTH**<sup>1</sup> is charged with violating three of the probation conditions imposed on her by the Supreme Court's order issued on April 4, 2008. (*In re VALERIE CANDICE WHITWORTH on Discipline*, case no. S160620 (State Bar Court case number 05-O-04988) [*Whitworth II*].)

The State Bar's Office of Probation (Probation Office) was represented by Supervising Attorney Terrie Goldade. Respondent acted as counsel for herself.

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<sup>1</sup> Respondent was admitted to the practice of law on December 16, 1980, and has been a member of the State Bar of California since that time.

## **II. Pertinent Procedural History**

On March 26, 2009, the Probation Office filed the present motion to revoke respondent's probation. On May 11, 2009, respondent filed her response. A hearing was held on the motion on July 31, 2009, and the court took the motion under submission for decision on that date.

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

### **Probation Violations**

In its April 4, 2008, order in *Whitworth II*, the Supreme Court placed respondent on one year's stayed suspension and two years' probation on conditions, including ninety days' suspension. The Supreme Court imposed the discipline in *Whitworth II*, including each of the probation conditions, in accordance with a stipulation by respondent as to facts, conclusions of law, and disposition. Accordingly, respondent's misconduct here represents both a failure to adhere to the Supreme Court's order and a failure by her to comply with her own agreement.

The record establishes, by a preponderance of the evidence (Bus. & Prof. Code, § 6093, subd. (c);<sup>2</sup> Rules Proc. of State Bar, rule 561), that respondent willfully violated the probation condition requiring her to submit to the Office of Probation on or before every January 10, April 10, July 10, and October 10, quarterly probation reports stating under penalty of perjury whether she complied with the Rules of Professional Conduct of the State Bar, the State Bar Act, and all the conditions of her probation during the preceding calendar quarter. She filed the first four of these required reports but did not do so on a timely basis. She completely failed to file her fifth report.<sup>3</sup>

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<sup>2</sup> Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

The record further establishes, by a preponderance of the evidence, that respondent willfully violated the probation condition requiring her to file with each quarterly probation report a trust accounting certificate from a certified public accountant or other financial professional approved by the Probation Office, certifying whether respondent had performed specified client trust accounting procedures and maintained specified trust account records during the preceding quarter; if respondent did not possess any trust funds or property during the preceding quarter, she was required to so state under penalty of perjury in the probation report for that reporting period.

Respondent violated her trust accounting certificate condition because (1) she neither filed a trust accounting certificate with her second probation report (due October 10, 2008) nor stated in her second probation report that she did not possess any trust funds or property during the preceding quarter and (2) she neither filed a trust accounting certificate with her third probation report (due January 10, 2009) nor stated in her third probation report that she did not possess any trust funds or property during the preceding quarter. In addition, at the hearing on the motion to revoke, respondent stipulated (1) that she neither filed a trust accounting certificate with her fourth probation report (due April 10, 2009) nor stated in her fourth probation report that she did not possess any trust funds or property during the preceding quarter and (2) that she neither filed a trust accounting certificate for the reporting period covered by her fifth probation report (due July 10, 2009) nor stated in a fifth probation report that she did not possess any trust funds or property during the preceding quarter.

Finally, the record establishes, by a preponderance of the evidence, that respondent willfully violated the probation condition requiring her to report any change in her official membership records information to the State Bar's Membership Records Department and the

Probation Office within 10 days of the change because she failed to report a change in her membership records telephone number in about December 2008.

## **Aggravation**

### **Prior Discipline**

Respondent has two prior records of discipline, which are aggravating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)<sup>4</sup>

Respondent's first prior record of discipline is the private reproof with conditions that was imposed on her in State Bar Court case number 99-O-12678, et al. (*Whitworth I*) in accordance with a stipulation by respondent as to facts, conclusions of law, and disposition that was approved by the State Bar Court in December 2001. In *Whitworth I*, respondent stipulated to (1) failing to maintain sufficient funds in her client trust account between October 1998 and May 2000 when six client trust account checks were either returned due to insufficient funds or paid against insufficient funds; (2) failing to report to the State Bar a \$5,000 sanctions order imposed on her by a bankruptcy court in Nevada; and (3) failing to adequately supervise her staff, resulting in her staff improperly paying the \$5,000 in sanctions from her client trust account.

In respondent's second discipline, *Whitworth II*, respondent stipulated to failing, for more than three months, to distribute \$4,398.62 to her client in accordance with the client's request and a superior court order.

### **Mitigation**

Respondent did not establish any mitigating circumstances by clear and convincing evidence. (Standard 1.2(e).)

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<sup>4</sup> All further references to standard(s) are to this source.

#### IV. Discussion

In determining the appropriate level of discipline, the court is to consider, inter alia, the seriousness of the violations, respondent's efforts to comply with her probation conditions, respondent's recognition of her misconduct, and the total length of stayed suspension which could be imposed as an actual suspension. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Moreover, the court must consider standard 1.7(a), which provides that, when an attorney has a prior record of discipline, "the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."<sup>5</sup>

The State Bar contends that it is necessary and appropriate that this court actually suspend respondent for the full one-year period of the previously stayed suspension. This court agrees. The case of *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445 is instructive, and the court concludes that a one-year actual suspension is the appropriate level of discipline to recommend in the present proceeding. In addition, the court sua sponte concludes that respondent should be required to demonstrate that she is now willing and capable of fully engaging in the rehabilitative process by strictly complying with the probation conditions that were originally imposed on her in *Whitworth II* (and to which respondent stipulated) by

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<sup>5</sup> Even though standard 1.7(b) provides for disbarment when an attorney has two or more prior records of discipline like respondent does, that standard is not applicable when probation violations are charged in a probation revocation proceeding under section 6093 instead of an original disciplinary proceeding under section 6068, subdivision (k). (*In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244, 257, fn. 13.)

imposing substantially similar conditions on her for two years prospectively. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 705.)

### **V. Order and Discipline Recommendation**

The court orders that the Probation Office's March 26, 2009, motion to revoke respondent **VALERIE CANDICE WHITWORTH'S** probation is GRANTED, and the court recommends that the probation imposed on respondent **VALERIE CANDICE WHITWORTH** in the Supreme Court's April 4, 2008, order in case number S160620 (State Bar Court case number 05-O-04988) be revoked; that the stay of execution of the one-year suspension be lifted; that she be suspended from the practice of law in the State of California for one year with credit given for the period of her involuntary inactive enrollment under this court's order of inactive enrollment (Bus. & Prof. Code, § 6007, subd. (d)(3)); and that she again be placed on probation for two years on the following conditions:

1. Whitworth must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
2. Whitworth 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).) Whitworth 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).) Whitworth's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Whitworth 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. Within 30 days from the effective date of discipline, Whitworth must contact the Office of Probation and schedule a meeting with Whitworth's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Whitworth must meet with the probation deputy either in-person or by telephone. During the period of probation, Whitworth must promptly meet with the probation deputy as directed and upon request.
4. Whitworth 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

Whitworth is on probation (reporting dates). However, if Whitworth's probation begins less than 30 days before a reporting date, Whitworth may submit the first report no later than the second reporting date after the beginning of her probation. In each report, Whitworth 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:

- (i) In the first report, whether Whitworth 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
  - (ii) In each subsequent report, whether Whitworth 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, Whitworth 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, Whitworth must certify to the matters set forth in subparagraph (ii) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.
5. Subject to the proper or good faith assertion of any applicable privilege, Whitworth must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Whitworth, whether orally or in writing, relating to whether Whitworth is complying or has complied with the conditions of this probation.
6. Because Whitworth resides permanently in North Carolina, she is not required to attend Ethics School or Client Trust Accounting School. Instead, Whitworth must complete at least six hours of Minimum Continuing Legal Education (MCLE) courses in legal ethics plus at least six hours of MCLE courses in any area of the law. This probation condition is separate and apart from Whitworth's MCLE requirements; accordingly, Whitworth is ordered not to claim any MCLE credit for completing these twelve hours of courses.
7. During each calendar quarter in which Whitworth receives, possesses, or otherwise handles funds or property of a client (as used in this probation condition, the term "client" includes all persons and entities to which Whitworth owes a fiduciary or trust duty) in any manner, Whitworth must submit, to the State Bar's Office of Probation with the probation report for that quarter, a certificate from a certified public accountant (or other financial professional approved by the Office of Probation) certifying:
  - (A) whether Whitworth has maintained a bank account that is designated as a "Trust Account," "Clients' Funds Account," or words of similar import in a bank in the State of California (or, with the written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction);

- (B) whether Whitworth has, from the date of receipt of the client funds through the period ending five years from the date of appropriate disbursement of the funds, maintained:
- (1) a written ledger for each client on whose behalf funds are held that sets forth:
    - (a) the name and address of the client,
    - (b) the date, amount, and source of all funds received on behalf of the client,
    - (c) the date, amount, payee, and purpose of each disbursement made on behalf of the client, and
    - (d) the current balance for the client;
  - (2) a written journal for each bank account that sets forth:
    - (a) the name of the account,
    - (b) the name and address of the bank where the account is maintained,
    - (c) the date, amount, and client or beneficiary affected by each debit and credit, and
    - (d) the current balance in the account;
  - (3) all bank statements and cancelled checks for each bank account; and
  - (4) each monthly reconciliation (balancing) of (1), (2), and (3) and, if there are any differences, an explanation of each difference; and
- (C) whether Whitworth has, from the date of receipt of all securities and other properties held for the benefit of a client through the period ending five years from the date of appropriate disbursement of the securities and other properties, maintained a written journal that specifies:
- (1) each item of security and property held,
  - (2) the person on whose behalf the security or property is held,
  - (3) the date of receipt of the security or property,
  - (4) the date of distribution of the security or property, and
  - (5) the person to whom the security or property was distributed.

If Whitworth does not receive, possess, or otherwise handle client funds or property in any manner during an entire calendar quarter and if Whitworth includes, in her probation report for that quarter, a statement to that effect under penalty of perjury under the laws of the State of California, Whitworth is not required to submit a certificate for that quarter.

8. Because Whitworth suffers from Multiple Sclerosis, she is unable to take the Multistate Professional Responsibility Examination (MPRE). Accordingly, in lieu of being required to take and pass the MPRE, Whitworth is required to complete at least six hours of

MCLE courses in general legal ethics within the first year of her probation.<sup>6</sup> This probation condition is separate and apart from Whitworth's MCLE requirements; accordingly, Whitworth is ordered not to claim any MCLE credit for completing these six hours of courses.

9. Whitworth's new two-year probation will commence on the effective date of the Supreme Court order in this matter.

#### **VI. Rule 9.20, MPRE, and Costs**

The court recommends that Whitworth 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's order in this matter.<sup>7</sup>

As noted and explained above, the court does not recommend that Whitworth be required to take and pass the MPRE because she suffers from Multiple Sclerosis and is unable sit for the examination. Instead, as noted above, it is recommended that Whitworth be required as a condition of probation to complete at least six hours of MCLE courses in general legal ethics within the first year of her probation (see probation condition 8, *ante*).

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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<sup>6</sup> This recommendation is based on the comparable provision in the *Whitworth II* discipline order. Further, this recommended requirement, that respondent take six hours of MCLE courses in the first year of her probation, is in addition to the recommendation, contained in paragraph 6 above, that she complete an additional twelve hours of MCLE study during the overall term of her probation.

<sup>7</sup> Whitworth is required to file a rule 9.20(c) affidavit even if she has no clients. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

## **VII. Order of Inactive Enrollment**

The requirements for involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (d)(1), have been met. Therefore, the court orders that **VALERIE CANDICE WHITWORTH** be involuntarily enrolled as an inactive member of the State Bar under Business and Professions Code section 6007, subdivision (d)(1), effective three days after service of this order by mail (Rules Proc. of State Bar, rule 564). Unless otherwise ordered by the State Bar Court or the Supreme Court, Whitworth's involuntary inactive enrollment under this order will terminate, without the necessity of further court order, on the earlier of the effective date of the Supreme Court order in this matter or one year after her involuntary inactive enrollment commences. (See Bus. & Prof. Code, § 6007, subd. (d)(2); Rules Proc. of State Bar, rule 564.)

Dated: August 26, 2009.

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**DONALD F. MILES**  
Judge of the State Bar Court