

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

| | | |
|-----------------------------------|---|--------------------------------------|
| In the Matter of |) | Case No.: 09-PM-16028-PEM |
| |) | |
| MIGUEL ANGEL CHACON |) | ORDER GRANTING MOTION TO |
| |) | REVOKE PROBATION, |
| Member No. 99469 |) | RECOMMENDING DISCIPLINE AND |
| |) | ORDER OF INVOLUNTARY INACTIVE |
| <u>A Member of the State Bar.</u> |) | ENROLLMENT. |

INTRODUCTION

The Office of Probation (OP), represented by Terrie Goldade, filed a motion pursuant to Business and Professions Code sections 6093, subdivision (b) and 6093, subdivision (c)¹ and rules 560 et seq. of the Rules Proc. of State Bar² to revoke the probation of respondent Miguel Angel Chacon. Respondent did not participate in this proceeding although he was properly served with the motion by certified mail, return receipt requested, at his State Bar membership records address. A courtesy copy was also mailed to that address.

The OP’s request for judicial notice filed on October 29, 2009, is granted.

For the reasons stated below, the court finds by a preponderance of the evidence that respondent wilfully failed to comply with the terms of his probation. (Section 6093, subd. (c).) As a result, the court grants OP’s motion to revoke his probation and its request to involuntarily enroll him as an inactive member of the State Bar pursuant to section 6007, subdivision (d). The

¹Future references to section are to this source.

²Future references to rule are to this source.

court recommends that respondent's probation be revoked, that the previously-ordered stay be lifted and that he be actually suspended from the practice of law for two years and until he complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct³, among other things.

FINDINGS OF FACT

Jurisdiction

Respondent was admitted to the practice of law in California on December 1, 1981, and has been a member of the State Bar at all times since.

Probation Violations

On September 24, 2008, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case no. 07-H-14221 recommending discipline consisting of two years' stayed suspension and two years probation on conditions, including 30 days' actual suspension, among other things. A copy of the stipulation and the State Bar Court's order approving same were properly served upon respondent on that same date through his then-counsel of record by first-class mail, postage prepaid. The court's modification order, filed and served on November 7, 2008, was properly served upon respondent through his then-counsel of record by first-class mail, postage prepaid.

On March 4, 2009, the California Supreme Court filed an order, S169578, accepting the State Bar Court's discipline recommendation and ordering respondent to comply with the conditions of probation recommended, including the following, with which respondent did not comply:

(a) During the period of probation, submitting a written report to the OP on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect stating under penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report). Respondent has not submitted the quarterly reports due on the 10th of July 2009;

³ Future references to standard or std. are to this source.

(b) Within 60 days of the effective date of discipline (by June 2, 2009), develop a law office management plan in consultation with Rita De Angelis and submit it to the OP for approval. Respondent did not do so until July 30, 2009;

(c) With every quarterly report, state under penalty of perjury whether he has complied with the law office management plan and attach a report from De Angelis stating that she had reviewed his practice and that he was in compliance with the law office management plan. Respondent has not done so as he has not submitted the July 10, 2009 quarterly report. De Angelis submitted her report directly to the OP on August 17, 2009; and

(d) Put all attorney-client fee agreements in writing and state in each quarterly report whether he complied with this condition. Respondent has not done so as he has not submitted the July 10, 2009 quarterly report.

The Supreme Court order became effective on April 3, 2009, thirty days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent and/or his then-counsel.⁴

On March 18, 2009, the OP wrote a letter to respondent, properly sent to him at his official address, reminding him of certain terms and conditions of his suspension and probation imposed pursuant to the Supreme Court's order and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, instruction sheets or forms to use in submitting quarterly reports and proof of restitution, as well as scheduling and enrollment information for Ethics School.

On July 16, 2009, the OP sent respondent a letter to his official address indicating that it had not received his first quarterly report or the law office management plan.

⁴Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his or her duty and transmitted a copy of the Supreme Court's order to respondent and/or his then-counsel immediately after its filing.

The OP and respondent had telephonic contact several times. He called the OP on May 14, 2009, and left a message asking for a return call. Although a call was attempted, no one answered the telephone and a voicemail could not be left.

On July 28, 2009, respondent called the OP and stated that he had paid and met with De Angelis and that he was sending his quarterly report.

On August 4, 2009, respondent called the OP asking whether he should wait to meet with De Angelis to send his quarterly report. He was told, among other things, not to wait and to send in the report as soon as possible.

On August 5 and 6, 2009, the OP and respondent had telephonic contact regarding his proof of taking the Multistate Professional Responsibility Examination (MPRE).

Finally, on August 31, 2009, respondent left a message for his probation deputy at the OP. Although his call was returned that day and a voicemail left for him, he did not return the call.

Respondent did not comply with the conditions of probation as set forth above.

CONCLUSIONS OF LAW

Pursuant to section 6093, subdivisions (b) and (c) and rule 561, the court concludes that OP has demonstrated by a preponderance of the evidence that respondent wilfully violated the conditions of probation regarding quarterly reporting, timely submitting the law office management plan, stating in the quarterly reports that he had complied with the terms of the plan and put all client fee agreements in writing and submitting De Angelis' report with his quarterly report as ordered by the Supreme Court in S169578, more fully set forth above.

AGGRAVATING CIRCUMSTANCES

In aggravation, respondent has two prior records of discipline. (Std. 1.2(b)(i).) In S169578, respondent and the State Bar stipulated to culpability for violating conditions of a public reproof, namely not timely contacting the OP or paying restitution or taking and passing the MPRE; not filing four quarterly reports; not timely consulting with De Angelis to develop a law office management plan; not stating in the quarterly reports that he had complied with the terms of the plan and put all client fee agreements in writing; and not submitting De Angelis'

report with his quarterly reports. The court notes the similarity of the misconduct in the present case and in this prior matter. Aggravating factors included one prior instance of discipline and demonstrating indifference toward rectifying his misconduct. Mitigating factors included payment of restitution (no client harm) and problems due to separation and divorce from his spouse of 12 years.

In July 25, 2006, in State Bar Court case no. 05-O-4023, the court ordered a public reproof with conditions based on the parties' stipulation to culpability, in one client matter, to violations of rules 3-110(A) and 3-700(D)(1) and (2) of the Rules of Professional Conduct and section 6068, subdivision (i). Client harm was the sole aggravating factor. Mitigating factors included no prior discipline, candor and cooperation, family problems and good character references.

Respondent engaged in multiple acts of misconduct. (Std. 1.2(b)(ii).)

Respondent significantly harmed the administration of justice as his failure to comply with the conditions of his probation made it more much difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

Further, respondent's failure to comply with the probation conditions after being reminded by OP demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

MITIGATING CIRCUMSTANCES

It is respondent's burden to establish mitigating factors, but he did not participate in this proceeding. Accordingly, no mitigating factors are found.

DISCUSSION

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.7 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding, but any actual suspension cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rule 562.) The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation

violation and respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The court agrees with the OP's request that respondent be actually suspended for the full amount of stayed suspension. Respondent was aware of the terms and conditions of his disciplinary probation, yet failed to comply with them despite reminders from OP. Moreover, the misconduct in the present case and in the immediately preceding matter is very similar. This is his third disciplinary matter. Finally, he did not appear in these proceedings so the court has no idea of the reasons why he has not complied with his prior disciplinary obligations.

The prior disciplinary order "provided [respondent] an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in [the matter] presently under consideration sadly indicates either his unwillingness or inability to do so." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) Accordingly, after considering the misconduct and the aggravating and mitigating circumstances, the court recommends, among other things, two years of actual suspension to continue until respondent undergoes a standard 1.4(c)(i) proceeding as sufficient to protect the public in this instance.

DISCIPLINE RECOMMENDATION

The court recommends that the probation of respondent MIGUEL ANGEL CHACON previously ordered in Supreme Court case matter S169578 (State Bar Court case no. 07-H-14221), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent be actually suspended for two years and he shall remain actually suspended until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule

9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.⁵

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 he was ordered to do so in Supreme Court matter S169578 (State Bar Court case no. 07-H-14221).

COSTS

It is recommended 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.

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that respondent be actually suspended due to said violations.

IT IS THEREFORE ORDERED that respondent MIGUEL ANGEL CHACON, be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order.

IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by Business and Professions Code section 6007, subdivision (d)(2).

IT IS RECOMMENDED that respondent's actual suspension in this matter commence

⁵Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

as of the date of his inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: November _____, 2009

PAT E. McELROY
Judge of the State Bar Court