

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>09-PM-18806-LMA</b>
	)	
<b>CYNTHIA LESLIE COX</b>	)	<b>DECISION INCLUDING ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 168112</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

**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)<sup>1</sup> and rules 560 et seq. of the Rules Proc. of State Bar<sup>2</sup> to revoke the probation of respondent Cynthia Leslie Cox. Respondent did not participate in this proceeding although she was properly served with the motion by certified mail, return receipt requested, at her State Bar membership records address.

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

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<sup>1</sup>Future references to section are to this source.

<sup>2</sup>Future references to rule are to this source.

lifted and that she be actually suspended from the practice of law for two years and until she complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.<sup>i</sup>

## **FINDINGS OF FACT**

### **Jurisdiction**

Respondent was admitted to the practice of law in California on December 14, 1993, and has been a member of the State Bar at all times since.

### **Probation Violations**

On December 10, 2008, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case no. 06-0-14846 [07-0-13876; 08-0-10825; 08-O-10894] recommending discipline consisting of two years' stayed suspension and four years' probation, 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 at her State Bar membership records address by first-class mail, postage prepaid.

On June 16, 2009, the California Supreme Court filed an order, S172347, 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) Within 30 days of the effective date of discipline, contacting the OP to schedule a meeting to discuss the terms and conditions of probation. Respondent did not contact the OP by August 15, 2009, and has not had the requisite meeting; and

(b) 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 she 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 report due on the 10<sup>th</sup> of October 2009.

The Supreme Court order became effective on July 16, 2009, thirty days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent.<sup>3</sup>

On July 2, 2009, the OP wrote a letter to respondent, properly sent to her at her official address, reminding her of certain terms and conditions of her 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, as well as scheduling and enrollment information for Ethics School.

On November 10, 2009, the OP sent respondent a letter to her official address indicating that it had not received her first quarterly report. It also noted that she had not contacted the OP to discuss the terms and conditions of her probation.

Neither correspondence was returned to the OP.

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 contacting and meeting with the OP and filing quarterly reports, as ordered by the Supreme Court in S172347, more fully set forth above.

#### **AGGRAVATING CIRCUMSTANCES**

In aggravation, respondent has one prior record of discipline. (Std. 1.2(b)(i).) In S172347, respondent and the State Bar stipulated to culpability in four client matters of violations of rule 3-100(A) of the Rules of Professional Conduct (one count), section 6103 (one

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<sup>3</sup>Although 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 immediately after its filing.

count), section 6068, subdivision (i) (three counts) and section 6068, subdivision (o)(3) (one count). Multiple acts of misconduct was the aggravating factor. No prior discipline since 1993 was the mitigating factor.

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

### **MITIGATING CIRCUMSTANCES**

It is respondent's burden to establish mitigating factors, but she 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 her misconduct and her 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 her disciplinary probation because she stipulated to them, yet she failed to comply with them.

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.) 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 she complies with Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.4(c)(ii), during which time she will have the

opportunity of demonstrating that she is desirous and able to meet these important ethical obligations in the timely and serious fashion expected of California attorneys. The court expects no less from respondent.

### **DISCIPLINE RECOMMENDATION**

The court recommends that the probation of respondent CYNTHIA LESLIE COX, previously ordered in Supreme Court case matter S172347 (State Bar Court case no. 06-0-14846 [07-0-13876; 08-0-10825; 08-O-10894]), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent be actually suspended for two years and until she provides proof to the satisfaction of the State Bar Court of her 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.<sup>4</sup>

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 S172347 (State Bar Court case no. 06-0-14846 [07-0-13876; 08-0-10825; 08-O-10894]).

### **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.

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<sup>4</sup>Respondent is required to file a rule 9.20(c) affidavit even if she has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

**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 CYNTHIA LESLIE COX, 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 her 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 as of the date of her inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: March \_\_\_\_\_, 2011

  

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LUCY ARMENDARIZ  
Judge of the State Bar Court