

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 10-PM-07109-DFM
)	
STEPHEN THOMAS BORRELLI)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 143746)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

This matter is before the court on the motion filed by the State Bar’s Office of Probation (Office of Probation) on July 29, 2010, to revoke the disciplinary probation that the Supreme Court imposed on **Stephen Thomas Borrelli** (Respondent) in its April 1, 2010 order in *In re Stephen Thomas Borrelli on Discipline*, Case No. S179774 (State Bar Court Case No. 08-O-12070) (Supreme Court order). In its motion, the Office of Probation alleges that Respondent violated his probation by: (1) failing to meet with the Office of Probation and discuss the terms and conditions of probation; (2) failing to submit his first quarterly report due on July 10, 2010; and (3) failing to join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment within 30 days of the effective date of discipline.

As will be discussed in greater detail below, the court finds, by a preponderance of the evidence (Bus. & Prof. Code, §6093, subd. (c)¹; Rules Proc. of State Bar, rule 561), that

¹ All further references to section(s) are to the Business and Professions Code.

Respondent willfully violated the conditions of his probation. The court therefore grants the Office of Probation's motion to revoke Respondent's probation.

The Office of Probation, represented by Supervising Attorney Terrie Goldade, contends that Respondent should be actually suspended from the practice of law for two years, the period of stayed suspension ordered by the Supreme Court earlier this year. In addition, the Office of Probation asks that Respondent's actual suspension continue until Respondent establishes his rehabilitation, fitness to practice, and learning and ability in the law in accordance with standard 1.4(c)(ii) of the Rules of Procedure of State Bar, tit. IV, Standards for Attorneys Sanctions for Professional Misconduct.² Finally, the Office of Probation requests that Respondent be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (d).

The court agrees with the Office of Probation's recommendations and recommends discipline as set forth below. In addition, the court orders that Respondent be involuntarily enrolled as an inactive member.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent was admitted to the State Bar on December 11, 1989, and was a member at all times pertinent to these charges. On November 20, 2009, Respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition with the State Bar of California in Case No. 08-O-12070. The stipulated discipline included a stayed suspension of two years, probation for two years, a 30-day actual suspension, and a number of specified conditions of probation. These conditions included the following:

Within 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 these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-

² All references to standard(s) are to this source, unless otherwise noted.

person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for two (2) year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

The stipulation was approved by the State Bar Court on December 8, 2009, and filed that same day.

On April 1, 2010, the California Supreme Court issued its order, which included the two-year stayed suspension, two years of probation, 30 days' actual suspension, and conditions of probation recommended by the Hearing Department. That order became effective on May 1, 2010.

Respondent was properly served with the Supreme Court's order.³ On May 5, 2010, the Office of Probation wrote to Respondent regarding his obligations under the Supreme Court order. In this letter, Respondent was reminded of his obligation to schedule a meeting with the Office of Probation within 30 days from the effective date of the Supreme Court order, his ongoing obligation to provide quarterly reports to the Office of Probation, and the requirement that he join the State Bar's Law Practice Management & Technology Section within 30 days

³ It is presumed that Respondent was served with the disciplinary order of the Supreme Court. While that is a rebuttable presumption, Respondent offered no evidence or argument that he was unaware of the Supreme Court order. (See *In re Linda D.* (1970) 3 Cal.App.3d 567; *People v. Smith* (1965) 234 Cal.App.2d 407; Evid. Code, §664.)

from the effective date of the Supreme Court order. The letter included a warning that a failure to submit reports or any other proof of compliance may result in the imposition of additional discipline. The letter further advised Respondent that, should he need to seek an extension of time of any of the terms and conditions of the discipline order, he needed to direct any such request to the State Bar Court, rather than the Office of Probation. At the time this letter was sent to Respondent, a package of additional information was included with it, including, among other things, another copy of the Supreme Court order, a copy of the conditions of probation, a schedule for the MPRE testing dates, and a quarterly report form with instructions.

Following the Office of Probation's May 5, 2010 reminder letter, Respondent called the Office of Probation on May 11, 2010, and scheduled a meeting for May 18, 2010. On May 18, 2010, a representative from the Office of Probation called Respondent and left a message requesting a return call regarding the terms and conditions of Respondent's probation. Respondent, however, did not return the call, and no meeting has been held.

Respondent's first quarterly report to the Office of Probation was due by July 10, 2010. Respondent failed to file his first quarterly report.

Respondent was also required to furnish proof that he joined the Law Practice Management and Technology Section of the State Bar to the Office of Probation in his first quarterly report. Respondent failed to submit such proof to the Office of Probation.

Notwithstanding Respondent's obligations under the Supreme Court order and the Office of Probation's efforts to motivate Respondent to comply with them, Respondent failed to: (1) meet with his assigned probation deputy upon request of the Office of Probation; (2) timely submit his first quarterly report to the Office of Probation; and (3) timely provide the Office of Probation with proof that he joined the Law Practice Management and Technology Section of the State Bar.

On July 29, 2010, the instant motion to revoke probation was filed and properly served on Respondent. Respondent did not timely file with this court a response to the motion.

Accordingly, on August 24, 2010, this matter was submitted for decision.

To establish culpability for a probation violation charged in a probation revocation proceeding, the Office of Probation 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 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 his probation and that those violations were willful. Without question, Respondent's willful probation violations warrant the revocation of his probation. (Section 6093, subd. (b).)

AGGRAVATING CIRCUMSTANCES

Prior Record of Discipline

As noted above, Respondent has a prior record of discipline consisting of the underlying disciplinary matter—Supreme Court Case No. S179774 (State Bar Court Case No. 08-O-12070). In that stipulated matter, Respondent was found culpable of failing to perform legal services with competence, failing to properly communicate with his client, failing to withdraw from employment when his mental condition rendered it unreasonably difficult for him to continue his employment, and willfully disobeying or violating a court order. Respondent received, among other things, a two-year stayed suspension, with two years' probation, and a 30-day actual suspension.

Multiple Acts

Respondent's present misconduct involves multiple probation violations.

MITIGATING CIRCUMSTANCES

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Standard 1.2(e).) No mitigating factors were shown by the evidence presented to this court.

DISCUSSION

The use of attorney discipline probation has increased with such frequency that it is now posed in almost every disciplinary proceeding in which either actual or stayed suspension is ordered. The Review Department has repeatedly held that the primary goals of probation are protection of the public and rehabilitation of the attorney. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) What is more, because an attorney has an independent statutory duty to comply with all conditions attached to any disciplinary probation, an attorney's violation of a disciplinary probation condition is grounds for both (1) revoking the attorney's probation and (2) disciplining the attorney. (Sections 6068, subd. (k) and 6093, subd. (b); see also Rules Proc. of State Bar, rule 562.)

Disciplinary probation is effective "only when the attorneys placed on probation are effectively monitored to ensure (1) that they do not again engage in misconduct and (2) that they are undertaking to conform their conduct to the ethical strictures of the profession." (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.) The Review Department has repeatedly held that "an attorney probationer's filing of quarterly probation reports is an important step towards the attorney's rehabilitation. [Citations]." (*Ibid.*) "At a minimum, quarterly probation reporting is an important step towards an attorney probationer's rehabilitation because it requires the attorney, four times a year, to review and reflect upon his professional conduct.... In addition, it requires the attorney to review his conduct to ensure that

he complies with all of the conditions of his disciplinary probation.” (*Id.* at p. 763.) Finally, the probationer’s filing of quarterly reports is a recognized and important means of protecting the public because it permits the State Bar to monitor the attorney’s compliance with the State Bar Act and the Rules of Professional Conduct. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 705.)

The evidence before the court reflects Respondent’s unwillingness or inability to comply with the requirements of disciplinary probation. The court has no indication that Respondent has engaged in the rehabilitative process since the Supreme Court issued its order in April 2010. Due to his failure to participate in the present proceedings, the court has no reason to believe that Respondent will comply with any subsequent probationary conditions or requirements. Accordingly, this court concludes that Respondent’s present probation violation warrants a two year actual suspension, the greatest level of actual suspension that this court may recommend. (Rules Proc. of State Bar, rule 562; *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 574, fn. 5.)

The court concurs with the Office of Probation’s recommendation that Respondent be required, as a condition of re-entering the practice, to provide proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii). Such a requirement has been utilized by the Review Department in the past and may be ordered, notwithstanding the restrictions of Rule of Procedure, rule 562. (See *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737.)

RECOMMENDATION

Accordingly, the court recommends as follows:

Disciplinary Recommendation

The court recommends that the probation of Respondent **Stephen Thomas Borrelli**, previously ordered in Supreme Court Case No. S179774 (State Bar Court Case No. 08-O-12070), be revoked; that the previous stay of execution of the suspension be lifted; that Respondent be actually suspended from the practice of law for two years, with credit given for the time spent on inactive enrollment, and until he provides satisfactory proof of his rehabilitation and fitness to practice within the meaning of standard 1.4(c)(ii).

MPRE

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination as he was previously ordered to do so in Supreme Court Case No. S179774.

California Rules of Court, Rule 9.20

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's order in this matter. Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁴

⁴If this requirement is ordered by the Supreme Court, Respondent will be required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Costs

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

Order of Involuntary Inactive Enrollment

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

Dated: September _____, 2010

DONALD F. MILES
Judge of the State Bar Court