

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 10-PM-07440-PEM
)	
SUSAN ANGELA CALLENDER,)	
)	ORDER RE
Member No. 187501,)	MOTION TO REVOKE PROBATION
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **Susan Angela Callender** 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.

The court finds, by preponderance of the evidence, that respondent has violated her probation conditions and hereby grants the motion in part and denies it in part. The court recommends, among other things, that respondent's probation be revoked, that the previously stayed, one-year suspension be lifted, that she be suspended for one year, that execution of the suspension be stayed, that she be placed on probation for one year on conditions, including an actual suspension of six months.

II. Pertinent Procedural History

On August 4, 2010, the Office of Probation filed and properly served a motion to revoke probation on respondent. The motion was mailed to respondent's official membership records address. Respondent did not file a response within 20 days of the service of the motion. (Rules Proc. of State Bar, rule 563(b)(1).)

The court took this matter under submission on August 31, 2010.

III. Findings of Fact and Conclusions of Law

All factual allegations contained in the motion to revoke probation and supporting documents are deemed admitted upon respondent's failure to file a response. (Rules Proc. of State Bar, rule 563(b)(3).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on January 27, 1997, and has since been a member of the State Bar of California.

B. Probation Conditions in Supreme Court Case No. S176717

On November 17, 2009, in Supreme Court case No. S176717 (effective December 17, 2009), the California Supreme Court ordered, among other things, that:

1. Respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, and that she be placed on probation for one year, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed June 19, 2009 (State Bar Court case No. 07-O-14961); and
2. Respondent comply, among other things, with the following probation conditions:

- a. Within 30 days from the effective date of discipline (by January 16, 2010), she must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the probation conditions; and
- b. Submit quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation.

Notice of this order was properly served upon 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 6002.1.¹

C. The Office of Probation and Quarterly Reports

On December 11, 2009, probation deputy Cindy Jollotta of the Office of Probation sent a letter to respondent outlining the terms and conditions of her probation. The letter was returned as undeliverable.

On December 23, 2009, when the Office of Probation telephoned respondent, respondent confirmed that her membership records address was accurate and current. At the same time, she asked the Office of Probation to mail the December 11, 2009 letter to her home address. Although she was told that she should change her membership records address, if necessary, she did not do so. Thereafter, a courtesy copy of the letter with attachments was mailed to respondent's home address on December 23, 2009. That letter was not returned to Office of Probation as undeliverable or for any other reason.

On June 24, 2010, the Office of Probation again telephoned respondent, informing her that she was out of compliance with the terms and conditions of her probation. On June 25, 2010, respondent telephoned the Office of Probation to schedule a meeting to discuss the terms of her probation, which was later held on June 29, 2010. During this June 29 telephonic

¹References to sections are to the provisions of the Business and Professions Code.

meeting, they discussed, among other things, reporting schedule and other probation requirements. Respondent also mentioned that the restitution payee, Harold Thomas, had died and inquired as to who the recipient of the restitution payment should be. Probation deputy Jollotta informed respondent that she would call her back.

However, when probation deputy Jollotta telephoned respondent on July 27, 2010, on two occasions, no one answered the phone. She then left a voice mail message for respondent, advising her regarding the restitution requirement and her noncompliance with her probation conditions.

Quarterly reports were required to be submitted by respondent on April 10, 2010 and July 10, 2010. Respondent failed to submit any quarterly report for these two quarters. As of August 3, 2010, respondent has not filed her first two quarterly reports due April 10 or July 10, 2010.

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

Respondent willfully violated her probation conditions ordered by the Supreme Court in its November 17, 2009 order by failing to do the following:

1. Contact the Office of Probation by January 16, 2010, to discuss the terms and conditions of her probation; and
2. Submit two quarterly reports due April 10 and July 10, 2010.

As a result, the revocation of respondent's probation in California Supreme Court case No. S176717 is warranted.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)²

A. Mitigation

Since respondent did not file a response to the probation revocation motion, no evidence in mitigation was presented and none is apparent from the record. (Std. 1.2(e).)

B. Aggravation

In aggravation, respondent has one prior record of discipline. (Std. 1.2(b)(i).) In the underlying matter, effective December 17, 2009, respondent was ordered suspended for one year, stayed, and placed on probation for one year for her professional misconduct in one client matter – unauthorized practice of law and failure to return unearned fees. (Supreme Court case No. S176717; State Bar Court case No. 07-O-14961.)

Respondent committed multiple acts of wrongdoing, including timely contact the Office of Probation and failing to submit two quarterly reports. (Std. 1.2(b)(ii).)

An attorney's continued failure to comply with her probation conditions after being notified of that noncompliance is properly considered a substantial aggravating circumstance. It demonstrates indifference toward rectification of or atonement for the consequences of one's misconduct. (Std. 1.2(b)(v); *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) Although the motion to revoke her probation was filed in August 2010, which

²All further references to standards are to this source.

put respondent on notice that her probation status was in jeopardy and that her past quarterly reports were delinquent, respondent still failed to submit her quarterly reports.

Respondent's failure to participate in this proceeding is also an aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The Office of Probation urges that respondent's probation be revoked and that she be actually suspended for one year, the entire original period of stayed suspension.

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.) Absent compelling mitigating circumstances, an attorney who willfully violates a significant condition of probation can anticipate actual suspension as the expected result. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 574.)

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. 525, 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.*)

A probation "reporting requirement permits the State Bar to monitor [an attorney probationer's] compliance with professional standards." (*In the Matter of Wiener* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In addition, "an attorney probationer's filing of quarterly probation reports is an important step towards the attorney's rehabilitation." (*Id.* at p. 763.)

Here, respondent failed to file her first two quarterly reports. But the court does not believe that imposing the entire period of stayed suspension is necessary to achieve the goals of attorney disciplinary probation. The Office of Probation's recommendation that respondent's probation be revoked without further conditions is inadequate to impress upon her the importance of strict compliance with probation conditions as an integral step toward rehabilitation, and that she be actually suspended for one year, the entire original period of stayed suspension, is excessive and not necessary.

Therefore, the court finds good cause for granting the Office of Probation's motion to revoke respondent's probation and concludes that part of the period of the stayed suspension be imposed. Balancing all relevant facts and circumstances to reach the appropriate recommendation of degree of discipline, the court finds that a six-month actual suspension with one year's probation would be sufficient to achieve the goals of attorney disciplinary probation.

The Office of Probation further recommends that respondent be placed on involuntary inactive status under section 6007, subdivision (d), for failing to comply with the terms of her disciplinary probation. However, it is possible that if respondent was placed on involuntary inactive status, by the time the Supreme Court order imposing discipline in this matter became effective, respondent would have been precluded from practicing law for a longer period than the recommended discipline. Therefore, based on the short period of actual suspension recommended, the court denies the Office of Probation's request to enroll respondent involuntarily inactive under section 6007, subdivision (d).

VI. Recommendations

Accordingly, the court recommends as follows:

A. Discipline

The court recommends that the probation of respondent, **Susan Angela Callender**, previously ordered in Supreme Court Case No. S176717 (State Bar Court case No. 07-O-14961) be revoked, that the previous stay of execution of the one-year suspension be lifted, that respondent be suspended from the practice of law in California for one year, that execution of the suspension be stayed, and that respondent be placed on probation³ for one year on the following conditions:

1. Respondent must be suspended from the practice of law for the first six months of probation;
2. Respondent must make restitution to Harold Thomas or the estate of Harold Thomas in the amount of \$2,000 plus 10 percent interest per year from November 1, 2007 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Harold Thomas or the estate of Harold Thomas, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles;

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d);
3. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation;
4. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current office address and telephone

³ The probation period will commence on the effective date of the Supreme Court's order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent 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).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent 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;

5. Respondent 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 respondent is on probation (reporting dates). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of her probation. In each report, respondent 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:
 - a. In the first report, whether respondent 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
 - b. In each subsequent report, whether respondent 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, respondent 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, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California;

6. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation;
7. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201); and
8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent

from the practice of law for one year that is stayed will be satisfied and that suspension must be terminated.

B. Multistate Professional Responsibility Exam

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination since she was previously ordered to do so in S176717.

C. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Willful failure to do so may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁴

D. 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.

Dated: September____, 2010

PAT McELROY
Judge of the State Bar Court

⁴ 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.)