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PUBLIC MATTER

FILED
JAN 26 2011
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **AUGUSTO ACHACOSO MORA** **Member No. 147160** A Member of the State Bar.	Case No.: **10-PM-11015-RAP** **ORDER GRANTING MOTION TO REVOKE PROBATION AND FOR INVOLUNTARY INACTIVE 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 5.310 et seq. of the Rules Proc. of State Bar[2] to revoke the probation of respondent Augusto Achacoso Mora. 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.

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 court recommends that respondent's probation be revoked, that the previously-ordered stay be

[1]Future references to section are to this source.

[2]Future references to rule are to this source.

lifted and that he be actually suspended from the practice of law for five years and until he complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.[3]

FINDINGS OF FACT

Jurisdiction

Respondent was admitted to the practice of law in California on June 11, 1990, and has been a member of the State Bar at all times since.

Probation Violations

On August 22, 2007, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case no. 05-O-00151 recommending discipline consisting of five years' stayed suspension and five years' probation on conditions including actual suspension for two years and until he complied with standard 1.4(c)(2), among other things. A copy of the stipulation and the State Bar Court's order approving same were properly served upon respondent's counsel on that same date by first-class mail, postage prepaid.

On December 11, 2007, the California Supreme Court filed an order, S157374, 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 April, July and October 2010. Moreover, the following reports, due on the 10th of January and October 2008, January 2009 and January 2010, were filed untimely, respectively, as follows: April 4, 2008; March 3, 2009; January 12, 2009; and January 12, 2010.

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

(b) Within six months of the effective date of discipline, that is, by July 10, 2008, develop a law office management/organization plan and submit it to the OP for approval. Respondent did not do so until September 30, 2008. He initially submitted a plan on July 7, 2008, which was disapproved by the OP in a letter dated July 16, 2008. He did not submit an amended plan until September 30, 2008 and it was approved on that date;

(c) By January 10, 2009, submit to the OP satisfactory evidence of completion of no less than 10 hours of MCLE-approved courses in law office management, attorney-client relations and/or general legal ethics. This requirement was separate from any MCLE requirement and he was not to receive MCLE credit for completing those courses. Respondent submitted copies of cassette tapes and DVDs of MCLE courses he had completed but he had submitted these as part of his regular MCLE requirements and, as such, they did not count towards compliance with this probation condition; and

(d) Within 30 days of the effective date of discipline, join the State Bar's Law Office Management and Technology section and pay the dues and costs of enrollment for five years. Respondent was to provide proof of his enrollment with each March quarterly report. He did not do so for 2010.

The Supreme Court order became effective on January 10, 2008, thirty days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent.[4]

On December 28, 2007, the OP wrote a letter to respondent, properly sent to him at his then-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,

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[4]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.

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 November 17, 2010, the OP sent respondent a letter to his official address indicating that he was not in compliance and was being referred for prosecution.

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 5.311, the court concludes that OP has demonstrated by a preponderance of the evidence that respondent wilfully violated the conditions of probation regarding quarterly reports, developing and submitting a law office management plan, providing proof of membership in the State Bar's Law Office Management and Technology section and completing 10 hours of MCLE courses as ordered by the Supreme Court in S157374, more fully set forth above.

AGGRAVATING CIRCUMSTANCES

In aggravation, respondent has one prior record of discipline. (Std. 1.2(b)(i).) In S157374, respondent and the State Bar stipulated to culpability for violations of rules 1-300 and 1-311(B) and (D) of the Rules of Professional Conduct and section 6106 of the Business and Professions Code. Client harm was the aggravating factor. No prior discipline and candor and cooperation were mitigating factors. As previously noted, he was actually suspended for five year, among other things, as a result.

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 5.312.) 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.

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, five years' actual suspension and until he complies with standard 1.4(c)(2) during which time he will have the opportunity of demonstrating that he 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 Augusto Achacoso Mora, previously ordered in Supreme Court case matter S157374 (State Bar Court case no. 05-O-00151), be revoked; that the previous stay of execution of the suspension be lifted, and that

respondent be actually suspended for five years and 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]

Respondent successfully completed State Bar Ethics School so it will not be ordered in connection with this matter.

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination as he was ordered to do so in Supreme Court matter S157374 (State Bar Court case no. 05-O-00151).

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 Augusto Achacoso Mora, be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business

[5]Respondent 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.)

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

Dated: January 25, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 26, 2011, I deposited a true copy of the following document(s):
ORDER GRANTING MOTION TO REVOKE PROBATION AND FOR INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

AUGUSTO A. MORA
PO BOX 2044
WINNETKA, CA 91306

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Terrie L. Goldade,PROBATION, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 26, 2011.

Johnnie Lee Smith
Case Administrator
State Bar Court