

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 10-PM-11229-LMA
)	
JOHN ST. JOHN)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 54642)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **John St. John** is charged with violating his probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (“Office of Probation”) seeks, among other things, to revoke his 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 a preponderance of the evidence, that respondent has violated his probation conditions and hereby grants the Office of Probation’s motion to revoke. The court recommends, among other things, that respondent’s probation be revoked, that the previously stayed suspension be lifted, and that respondent be actually suspended from the practice of law for one year and until he makes restitution.

II. Pertinent Procedural History

On December 17, 2010, the Office of Probation properly served a motion to revoke probation on respondent, pursuant to the former Rules of Procedure of the State Bar of California

(“former Rules of Procedure”), rules 560, et seq.¹ This motion was filed in the State Bar Court on December 20, 2010. Respondent did not file a response, as required by rule 563(b) of the former Rules of Procedure. The court ultimately took this matter under submission on January 14, 2011.

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 5.314.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 13, 1972, and has since been a member of the State Bar of California.

B. Probation Conditions in Supreme Court Case No. S180417

On April 27, 2010, in Supreme Court Case No. S180417, the California Supreme Court ordered that:

1. Respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, and that he be placed on probation for three years subject to the condition that he be actually suspended for the first 30 days of probation; and
2. Respondent comply with other conditions of probation, as recommended by the Hearing Department of the State Bar Court in its Decision filed October 27, 2009 (State Bar Court case nos. 02-O-12281 (02-O-15122)), including, but not limited to, the following conditions:
 - a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - b. Within thirty (30) days after 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

¹ Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended.

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

- c. 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 he has complied with the State Bar Act, the Rules of Professional Conduct, and the conditions of probation during the preceding calendar quarter (“quarterly reports”);
- d. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that respondent has abstained from alcohol and drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the respondent’s expense, a screening report on or before the tenth (10) day of each month of the probation period, containing an analysis of respondent’s blood and/or urine obtained not more than ten (10) days previously; and
- e. Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent’s own expense a minimum of one (1) time per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.²

Notice of the April 27, 2010 Supreme Court Order was properly served on 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 6002.1.³ The Supreme Court order became effective on May 27, 2010.

² Respondent was also ordered to make restitution to Kristin Anderson/Donald Pierce in the amount of \$5,815 plus 10% interest per annum from July 1, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Kristin Anderson/Donald Pierce, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar’s Office of Probation. There is no indication in the record that respondent has paid any restitution.

³ All references to section(s) are to the Business and Professions Code, unless otherwise stated.

C. Probation Violations

As noted above, the Hearing Department's decision in the present matter was filed on October 27, 2009. Respondent subsequently telephoned the Office of Probation regarding his pending disciplinary probation on December 3, 2009 and March 24, 2010. On both occasions, respondent was informed that the Office of Probation had yet to receive the Supreme Court's disciplinary order.

On or about June 16, 2010, the Office of Probation sent a letter to respondent at his official address, outlining the terms and conditions of his probation. This letter was subsequently returned to the Office of Probation as "unclaimed."

Respondent's assigned probation officer tried to obtain a new address for respondent. On July 29, 2010, the probation officer telephoned respondent at the phone number listed on his membership records. The probation officer left a message requesting that respondent return his call. Respondent did not return this call.

Based on the evidence submitted by the Office of Probation, respondent failed to:

1. Contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation within thirty (30) days after the effective date of discipline;
2. Timely submit to the Office of Probation his first two quarterly reports, due July 10 and October 10, 2010;
3. Select a licensed medical laboratory approved by the Office of Probation and cause the laboratory to submit monthly screening reports on his behalf for June, July, August, September, October, November, and December 2010; and
4. Submit proof of psychiatric or psychological help/treatment, which was due in conjunction with his July 10 and October 10, 2010 quarterly reports.

To establish culpability for a probation violation charged in a probation revocation proceeding, the State Bar 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. Respondent's willful probation violations warrant the revocation of his probation. (Section 6093, subd. (b).)

IV. Mitigating and Aggravating Circumstances

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. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard Std. 1.2(e).)⁴

B. Aggravation

In aggravation, respondent has a prior record of discipline. (Std. 1.2(b)(i).)

On April 27, 2010, the California Supreme Court, in the underlying matter, issued an order (S180417) suspending respondent from the practice of law for one year, staying execution of the suspension, placing him on probation for three years, with a 30-day actual suspension. In this matter, respondent failed to perform legal services with competence and failed to inform his clients of significant developments. In aggravation, respondent caused significant harm to his clients and wrote a disrespectful letter to the judge who reported his misconduct to the State Bar. In mitigation, respondent had no prior record of discipline, he was candid and cooperative with the State Bar, he participated in the Lawyer's Assistance Program, and the State Bar delayed finalizing the stipulation.

⁴ All further references to standard(s) are to this source.

V. Discussion

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.)

“[T]here has been a wide range of discipline imposed for probation violations from merely extending probation ... to a revocation of the full amount of the stayed suspension and imposition of that amount as an actual suspension.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

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. at p. 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.*)

Here, respondent has given the court no indication that he intends to comply with the conditions of his previously imposed probation. In doing so, respondent has failed to undertake any of the rehabilitative steps that were deliberately crafted to insure public protection.

In consideration of respondent’s violation of probation conditions, his lack of participation in these proceedings, and his continuing noncompliance with probation conditions despite the Office of Probation’s efforts to secure it, the court does not believe it worthwhile to recommend again placing him on probation subject to conditions.

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.)

Hence, the court finds good cause to **GRANT** the motion to revoke respondent's probation and recommends, among other things, that the entire period of his stayed suspension be imposed.

VI. Recommended Discipline

Accordingly, the court recommends as follows:

1. That the probation of respondent **John St. John** previously ordered in Supreme Court case no. S180417 (SBC case nos. 02-O-12281 (02-O-15122)) be revoked;
2. That the previous stay of execution of the suspension be lifted; and
3. That respondent be actually suspended from the practice of law for a minimum of one year, and he will remain suspended until the following requirement is satisfied:
 - i. He makes restitution to Kristin Anderson/Donald Pierce in the amount of \$5,815 plus 10% interest per annum from July 1, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Kristin Anderson/Donald Pierce, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation.

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 order in this matter. Willful failure to comply with the provisions of rule 9.20 may result in suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁵

It is further recommended that if respondent is actually suspended for two years or more, he must remain suspended until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii).

⁵Respondent is 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.)

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 matter S180417.

VII. 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.

VIII. Order of Involuntary Inactive Enrollment

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).⁶ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: January ____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court

⁶Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)