

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 10-PM-02950-RAH
	)	
<b>ROSE MARIE ESTRADA,</b>	)	
	)	<b>ORDER GRANTING MOTION</b>
<b>Member No. 214510,</b>	)	<b>TO REVOKE PROBATION</b>
	)	
A Member of the State Bar.	)	
_____	)	

**1. Introduction**

In this probation revocation proceeding (Rules Proc. of State Bar, rule 560 et seq.), the State Bar's Office of Probation charges respondent **ROSE MARIE ESTRADA**<sup>1</sup> with violating two of the probation conditions that were imposed on her under the Supreme Court’s September 29, 2009 order in *In re Rose Marie Estrada on Discipline*, case number S175005 (State Bar Court case number 07-O14615, etc.) (hereafter *Estrada I*).

As set forth below, the court finds respondent culpable of the two charged probation violations and concludes that the appropriate level of discipline for those two violations is a new one-year stayed suspension and a new two-year probation with conditions, including ninety days’ suspension.

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<sup>1</sup> Respondent was admitted to the practice of law in this state on August 28, 2001, and has been a member of the State Bar of California since that time. She has one prior record of discipline.

## II. Pertinent Procedural History

On March 19, 2010, the Probation Office filed the motion to revoke probation in this proceeding and, in accordance with Business and Professions Code section 6002.1, subdivision (c), properly served a copy of that motion on respondent by certified mail, return receipt requested, at her latest address shown on the official membership records of the State Bar. That service was deemed complete when mailed even if respondent never received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see also *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Respondent never filed a response to the motion to revoke probation, and the time for respondent to do so under Rules of Procedure of the State Bar, rule 563(a) has long expired.

On April 29, 2010, this proceeding was reassigned to the undersigned judge for all purposes. Thereafter, on May 3, 2010, the undersigned judge took the matter under submission for decision without a hearing.<sup>2</sup>

## III. Findings of Fact and Conclusions of Law

Exhibits 1, 2, and 3 attached to the motion to revoke probation are received into evidence. (Rules Proc. of State Bar, rule 563(e).) Moreover, respondent's failure to file a response constitutes an admission of the *factual* allegations (not the legal conclusions or charges) contained in the motion and its supporting documents. (Rules Proc. of State Bar, rule 563(b)(3).) The court adopts those factual allegations and incorporates them herein by reference.

In its September 29, 2009 order in *Estrada I*, the Supreme Court placed respondent on one year's stayed suspension and two years' probation on conditions, including that respondent be suspended for the first 60 days of her probation. The Supreme Court imposed the discipline

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<sup>2</sup> The Probation Office did not request a hearing. (Rules Proc. of State Bar, rule 563(a).)

in *Estrada I*, including each of the probation conditions, in accordance with a stipulation as to facts, conclusions of law, *and disposition* that respondent entered into with the State Bar and that the State Bar Court approved in an order filed on April 1, 2009, in its case number 07-O-14615. Thus, the misconduct here represents respondent's failure to comply with her own agreement.

### **1. Probation-Meeting Condition**

The record establishes that respondent willfully violated her probation-meeting condition, under which she was required to contact the Probation Office *and* to schedule a meeting to discuss the terms and conditions of her probation with her assigned probation deputy no later than November 28, 2009.<sup>3</sup> Respondent did not contact the Probation Office to schedule such a meeting with her probation deputy by November 28, 2009. However, on December 11, 2009, she left a voicemail message for her probation deputy stating that she (i.e., respondent) was in Madrid, Spain and would try again. On March 12, 2010, respondent left another voicemail message for her probation deputy stating that she was in Spain and would try to call again.<sup>4</sup> Respondent did not request to schedule a probation meeting in either of these two voicemail messages.

In sum, the record establishes, by a preponderance of the evidence, that respondent willfully violated her probation-meeting condition because she failed to contact the Probation

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<sup>3</sup> Contrary to the Probation Office's contentions, respondent's probation-meeting condition does not require respondent "to actually conduct the ordered meeting" within a specified period of time or by a certain date. Accordingly, the court dismisses the charge that respondent violated her probation-meeting condition "in that, to date, she has failed to actually conduct the ordered meeting."

<sup>4</sup> The record establishes that, on December 11, 2009, the Probation Office sent respondent an email regarding a meeting with her probation deputy, but nothing in the record suggests, much less establishes by a preponderance of the evidence, that respondent actually received or read that email. Accordingly, neither the fact that the Probation Office sent respondent an email on December 11 nor the content of that email is relevant to any issue in this proceeding.

Office and schedule a probation meeting with her assigned probation deputy no later than November 28, 2009. In fact, as of the March 19, 2010, the date on which the Probation Office filed the present motion to revoke probation, respondent had still not contacted the Probation Office to schedule a probation meeting.

## **2. Quarterly-Probation-Reports Condition**

The record also establishes that respondent willfully violated her quarterly-probation-reports condition, which requires that she *submit* quarterly probation reports to the Probation Office on every January 10, April 10, July 10, and October 10. Specifically, the record establishes that respondent violated this condition because, at least as of March 19, 2010, respondent had not filed her first probation report (which was due January 10, 2010).

## **IV. Aggravation and Mitigation**

### **A. Aggravation**

Respondent has one prior record of discipline, which is an aggravating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)<sup>5</sup> Respondent's prior record of discipline is the California Supreme Court's September 29, 2009, order in *Estrada I*.

In *Estrada I*, respondent stipulated that, while she was suspended for nonpayment of her State Bar annual membership fees and while she was involuntarily enrolled inactive for not complying with her Minimum Continuing Legal Education requirements, respondent deliberately engaged in the unauthorized practice of law, on six nonconsecutive days in the latter half of 2007, by making a total of about sixteen court appearances on behalf of a pro bono client in a low level criminal proceeding in the Orange County Superior Court.

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<sup>5</sup> All further references to standards are to this source.

In *Estrada I*, the parties stipulated that respondent was entitled to mitigation because (1) she did not have a prior record of discipline (Std. 1.2(e)(i)); she recognized and acknowledged the wrongfulness of her conduct (Std. 1.2(e)(vii)); and (3) was very candid and cooperative with the State Bar during its investigation in that case (Std. 1.2(e)(v)). Moreover, in *Estrada I*, the parties stipulated that there were no aggravating circumstances.

## **B. Mitigation**

Because respondent did not appear in this probation revocation proceeding she did not establish any mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) Nor are any mitigating circumstances otherwise apparent from the record.

## **IV. Discussion**

Without citation to any authority and without any legal analysis, the Probation Office “requests that the hearing judge recommend revocation of Respondent’s probation and the imposition of one year of actual suspension. Furthermore, the hearing judge should order Respondent placed on involuntary inactive enrollment until the suspension is effective and order Respondent to comply with Rule 9.20, California Rules of Court.” At least in this court’s view, the Probation Office’s recommended level of discipline is punitive. (Cf. *Conroy v. State Bar* (1990) 51 Cal.3d 799 [60 days’ suspension for single probation violation in default proceeding].)

The purposes of disciplinary proceedings are to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline in a probation revocation proceeding, this court is to consider, inter alia, the seriousness of the violations, the respondent’s efforts to comply with the probation conditions, the respondent’s recognition of her misconduct, and the total length of stayed suspension that may be imposed as an actual suspension. (*In the Matter of Potack*

(Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540; see also Rules Proc. of State Bar, rule 562.)

Moreover, the court must consider standard 1.7(a), which provides that, when an attorney has a prior record of discipline, “the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.” Standard 1.7(a), however, is not to be applied in a talismanic fashion when, as here, there is no common thread or course of conduct through the past and present misconduct. (*In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 534.)

The cases of *Conroy v. State Bar*, *supra*, 51 Cal.3d 799 and *In re Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567 are instructive as to discipline. In *Conroy*, the attorney was found, in a default proceeding, to have violated one of the conditions attached to a private reproof that was previously imposed on him for committing three unrelated acts of misconduct. For that single reproof violation, the Supreme Court placed the attorney on one year’s stayed suspension and one year’s probation on conditions, including that the attorney be suspended during the first sixty days of her probation.

After carefully considering the seriousness of two found probation violations (failing to timely arrange for a meeting with her probation deputy and not submitting her first probation report); the total length of stayed suspension that may be imposed as a suspension; respondent’s prior record of discipline; the standards; and caselaw, the court concludes that the appropriate level of discipline is not the one-year suspension urged by the Probation Office, but one year’s

stayed suspension and two years' probation on conditions including that respondent be suspended during the first ninety days of probation.<sup>6</sup>

The court does not recommend that respondent be required to take and pass the Multistate Professional Responsibility Examination because she remains obligated to do so no later than October 29, 2010, under the Supreme Court's September 29, 2009 order in *Estrada I* and because, if respondent fails to pass the examination by that October 29, 2010 deadline, she will automatically be suspended from practice until she does by the review department. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; Cal. Rules of Court, rule 9.10(b); see also Rules Proc. of State Bar, rules 320, 321(a)&(c).) Nonetheless, the court strongly admonishes respondent to strictly comply with each and every one of her probation conditions because she now has two prior records of discipline. (See std. 1.7(b) [disbarment is the appropriate level of discipline in a proceeding when the attorney has two prior records of discipline].)

#### **V. Order and Discipline Recommendation**

The court orders that the Probation Office's March 19, 2010 motion to revoke the probation of respondent **ROSE MARIE ESTRADA** is GRANTED. Accordingly, the court recommends that the probation imposed on respondent **ROSE MARIE ESTRADA** in the Supreme Court's September 29, 2009 order in *In re Rose Marie Estrada on Discipline*, case number S175005 (State Bar Court case number 07-O14615, etc.) be revoked; that the stay of execution of the one-year suspension in that proceeding be lifted; that Estrada again be suspended from the practice of law in the State of California for one year, that the execution of

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<sup>6</sup> Even though not raised or addressed by the Probation Office, the court concludes that respondent should be required to demonstrate that she is now willing and capable of fully engaging in the rehabilitative process by *strictly* complying with the probation conditions that were imposed on her and to which she stipulated in *Estrada I* by imposing substantially similar conditions on her for two years prospectively. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 705.)

this new one-year suspension be stayed, and that Estrada again be placed on probation for two years on the following conditions:

1. Estrada is suspended from the practice of law in California for the first ninety days of her new two-year period of probation.
2. Estrada must comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all the conditions of this probation.
3. Estrada must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Estrada 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. (Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Estrada's home address and telephone number are *not* to be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Estrada must notify the Membership Records Office and the Office of Probation of any change in this information no later than 10 days after the change.
4. Within 30 days after the effective date of the Supreme Court order in this probation revocation proceeding, Estrada must contact the State Bar's Office of Probation and schedule a meeting with Estrada's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Estrada must meet with the probation deputy either in-person or by telephone. During the period of probation, Estrada must promptly meet with the probation deputy as directed and upon request.
5. Estrada must report, in writing, to the State Bar's Office of Probation on January 10, April 10, July 10, and October 10 of each year or part thereof in which Estrada is on probation (reporting dates). However, if Estrada's probation begins less than 30 days before a reporting date, Estrada may submit the first report no later than the second reporting date after the beginning of her probation. In each report, Estrada 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:
  - (i) In the first report, whether she has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all other conditions of probation since the beginning of probation; and
  - (ii) In each subsequent report, whether she has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all other conditions of probation during that period. During the last 20 days of her probation, Estrada 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, Estrada must certify to the

matters set forth above in subparagraph (ii) 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, Estrada must fully, promptly, and truthfully answer any inquiries of the California State Bar's Office of Probation that are directed to Estrada, whether orally or in writing, relating to whether she is complying or has complied with the conditions of her probation.
7. Within the first year of her probation, Estrada is to attend and satisfactorily complete the State Bar's Ethics School; and to provide satisfactory proof of her successful completion of that program to the State Bar's Office of Probation. The program is offered periodically at either 180 Howard Street, San Francisco, California 94105-1639 or at 1149 South Hill Street, Los Angeles, California 90015-2299. Arrangements to attend the program must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Estrada's Minimum Continuing Legal Education requirements; accordingly, she is ordered not to claim any MCLE credit for attending and completing this program. (Accord, Rules Proc. of State Bar, rule 3201.)
8. Estrada's new two-year probation (and her ninety-day suspension) will commence on the effective date of the Supreme Court order in this probation revocation proceeding. At the expiration of the period of probation, if Estrada has complied with all the conditions of probation, the new one-year period of stayed suspension will be satisfied and that suspension will be terminated.

#### **VI. Rule 9.20 & Costs**

The court further recommends that Rose Marie Estrada 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.<sup>7</sup>

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<sup>7</sup> Estrada is required to file a rule 9.20(c) compliance affidavit even if she has no clients to notify *on the date the Supreme Court files its order in this proceeding*. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) At least in the absence of compelling mitigating circumstances, an attorney's failure to comply with rule 9.20 almost always results in disbarment. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.)

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

Dated: May 27, 2010.

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**RICHARD A. HONN**  
Judge of the State Bar Court