

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 10-PM-00404-PEM
)	
FREDERICK TAIT EHLER)	
)	ORDER GRANTING MOTION TO
Member No. 165526)	REVOKE PROBATION AND ORDER OF
)	INACTIVE ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **Frederick Tait Ehler** 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.

II. Pertinent Procedural History

On January 19, 2010, the Office of Probation filed and properly served a motion to revoke probation on respondent, pursuant to Rules of Procedure of the State Bar of California

(“Rules of Procedure”), rules 560, et seq. Respondent did not file a response, as required by rule 563(b) of the Rules of Procedure. The court ultimately took this matter under submission on February 17, 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 July 19, 1993, and has since been a member of the State Bar of California.

B. Probation Conditions in Supreme Court Case No. S169131

On February 10, 2009, in Supreme Court Case No. S169131, 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 90 days; 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 30, 2008 (State Bar Court Case Nos. 02-O-12218 (02-O-15984; 02-O-15999)), including, but not limited to, the following conditions:
 - a. Respondent must submit written quarterly reports to the Office of Probation no later than 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 probation reports”);
 - b. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory such blood and/or urine samples as may be required to show that respondent has abstained from alcohol and/or drugs. Respondent must cause the laboratory to provide to the Office of Probation, at respondent’s own expense, a screening report on or before the 10th day of each month of the probation period, containing an

analysis of respondent's blood and/or urine obtained not more than 10 days earlier;

- c. Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records; and
- d. Respondent must maintain with the Office of Probation a current address and a current telephone number at which respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of respondent's blood or urine within 12 hours. For good cause, the Office of Probation may require respondent to deliver respondent's urine and/or blood sample(s) for additional reports to the laboratory no later than six hours after actual notice to respondent that the Office of Probation requires an additional screening report.

Notice of the February 10, 2009 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 6002.1.¹ The Supreme Court order became effective on March 12, 2009.

C. Probation Violations

On or about March 9, 2009, the Office of Probation sent a letter to respondent at his official address, outlining the terms and conditions of his probation. This letter was not returned to the Office of Probation as undeliverable, or for any other reason.

On March 23, 2009, the Office of Probation and respondent had an "initial" meeting. During this meeting, all of respondent's conditions were reviewed with him.

1. Quarterly Reports

As a condition of probation, respondent was required to submit quarterly reports to the Office of Probation no later than each January 10, April 10, July 10, and October 10 of the period of probation. Respondent filed his October 10, 2009 quarterly report late, on October 13, 2009.

¹ All references to section(s) are to the Business and Professions Code, unless otherwise stated.

2. Monthly Drug and Alcohol Screening Reports

Respondent was required to file monthly drug and alcohol screening reports with the Office of Probation. Respondent timely filed his first drug and alcohol screening report on April 7, 2009. All but one of his subsequent reports, however, were filed late or not at all. Below is a summary of respondent's monthly drug and alcohol screening reports.

<u>Report Due</u>	<u>Report Filed/Comments</u>
April 10, 2009	Timely filed on April 7, 2009
May 10, 2009	Filed on May 11, 2009
June 10, 2009	Filed on June 12, 2009
July 10, 2009	Timely filed on July 6, 2009
August 10, 2009	No report filed ²
September 10, 2009	Report submitted late, but not filed ³
October 10, 2009	Timely submitted, but not filed ⁴
November 10, 2009	Timely submitted, but not filed ⁵
December 10, 2009	No report received

On November 19, 2009, the Office of Probation spoke to respondent. Respondent advised that he was having problems getting the lab to provide the Office of Probation with the required screening test results. Respondent was therefore instructed to submit the name of a licensed medical laboratory for the approval of the Office of Probation. On December 17, 2009, the Office of Probation again requested that respondent submit the name of a licensed medical laboratory for the approval of the Office of Probation. Despite the requests of the Office of Probation, respondent did not submit the name of a licensed medical laboratory for the approval of the Office of Probation.

² Respondent subsequently advised the Office of Probation that his August 2009 report was not submitted to the Office of Probation because it was "dirty."

³ Respondent was not tested for the report due on September 10, 2009, until September 29, 2009. Respondent submitted this report, but the Office of Probation did not file it because the report failed to indicate what respondent had been tested for.

⁴ The Office of Probation did not file respondent's October 10, 2009 screening report because it failed to indicate what respondent had been tested for.

⁵ The Office of Probation did not file respondent's November 10, 2009 screening report because it was submitted directly by respondent and was not an original.

3. Medical Waiver

On November 19, 2009 and December 17, 2009, the Office of Probation requested that respondent provide it with a medical waiver. The Office of Probation faxed respondent a blank waiver form on November 19, 2009. Despite its requests, respondent failed to provide the Office of Probation with a medical waiver.

4. Current Address and Telephone Number for Random Testing

On November 19, 2009 and December 17, 2009, the Office of Probation requested that respondent provide it with a contact address and telephone number for random drug and alcohol testing. Despite its requests, respondent failed to provide the Office of Probation with a contact address and telephone number for random drug and alcohol testing.

5. Summary

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

1. Timely provide the Office of Probation with his October 10, 2009 quarterly report;
2. Submit seven timely and adequate drug and alcohol screening reports to the Office of Probation between May 10, 2009 and December 10, 2009;
3. Submit to the Office of Probation, upon its request, a medical waiver; and
4. Submit to the Office of Probation, upon its request, a contact address and telephone number for random drug and alcohol testing.

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 Proc. of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁶

B. Aggravation

In aggravation, respondent has two prior records of discipline.⁷ (Std. 1.2(b)(i).)

On March 3, 1997, the California Supreme Court issued an order (S058036) suspending respondent from the practice of law for two years, staying execution of the suspension, and placing him on probation for two years. This matter involved respondent's misdemeanor conviction for second-degree burglary.⁸ In aggravation, respondent's misconduct harmed the administration of justice. In mitigation, respondent cooperated with the State Bar and demonstrated remorse.

On February 10, 2009, the California Supreme Court, in the underlying matter, issued an order (S169131) suspending respondent from the practice of law for one year, staying execution of the suspension, and placing him on probation for three years on condition that he be actually suspended for 90 days. In this matter, respondent failed to communicate, failed to perform, improperly withdrew, and failed to refund unearned fees in two client matters. In aggravation, respondent committed multiple acts of misconduct and had a prior record of discipline. In

⁶ All further references to standard(s) are to this source.

⁷ The court grants the Office of Probation's February 17, 2010 request for judicial notice.

⁸ Respondent entered a therapy center through an open window and took a sample packet of Paxil—an antidepressant medication available only by prescription.

mitigation, respondent: (1) cooperated with the State Bar; (2) voluntarily became an inactive member of the State Bar while he attended residential treatment; (3) paid full restitution; (4) participated in the Lawyer Assistance Program; (4) served as a volunteer for various chemical dependency groups; and (5) was affected by the State Bar's delay—through no fault of his own.

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 adequately 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 and his lack of participation in these proceedings, 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 **Frederick Tait Ehler** previously ordered in Supreme Court case No. S169131 (SBC Case Nos. 02-O-12218 (02-O-15984; 02-O-15999)) 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 one year.

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.⁹

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 S169131.

⁹Respondent 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.)

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).¹⁰ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: February ___, 2010

PAT McELROY
Judge of the State Bar Court

¹⁰Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)