

**FILED**

SEP - 8 2010 *Mc*

STATE BAR COURT  
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LOS ANGELES

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT - LOS ANGELES PUBLIC MATTER**

In the Matter of )  
)  
**LUCIO GASCON CALUNGCAGIN, JR.,** )  
)  
Member No. 134519, )  
)  
A Member of the State Bar. )

Case No. **10-PM-06747-DFM**

**ORDER GRANTING MOTION TO  
REVOKE PROBATION AND FOR  
INVOLUNTARY INACTIVE  
ENROLLMENT**

**INTRODUCTION**

In this probation revocation proceeding, Respondent **Lucio Gascon Calungcagin, Jr.**, 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 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 preponderance of the evidence, that Respondent has violated his probation conditions and hereby grants the motion. Therefore, the court orders that Respondent be involuntarily enrolled as an inactive member of the State Bar. The court also recommends, among other things, that Respondent's probation be revoked, that the previously stayed, one-year suspension be lifted and that he be actually suspended for one year.



## **PERTINENT PROCEDURAL HISTORY**

On July 14, 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 17, 2010.

## **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).)

### **Jurisdiction**

Respondent was admitted to the practice of law in California on June 14, 1988, and has since been a member of the State Bar of California.

### **Probation Conditions in Supreme Court Case No. S168792**

On January 29, 2009, in Supreme Court case No. 168792 (effective February 28, 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, that he be placed on probation for two years, and that he be actually suspended for 90 days, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed October 8, 2008 (State Bar Court case No. 06-O-13653); and

2. Respondent comply, *inter alia*, with the following probation conditions:
  - a. Submit quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation;
  - b. Attend and pass the State Bar Ethics School within one year of the effective date of the Supreme Court order (by February 28, 2010); and
  - c. Attend and pass the State Bar Ethics School Client Trust Accounting School (CTA School) within one year of the effective date of the Supreme Court order (by February 28, 2010).

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.<sup>1</sup>

#### **Quarterly Reports, Ethics School and Client Trust Accounting School**

On February 23, 2009, the Office of Probation sent a letter to Respondent outlining the terms and conditions of his probation. On February 27, 2009, Respondent had a telephonic meeting with the Office of Probation.

Respondent filed the July 10, 2009 quarterly report on July 13, 2009, three days late.

On the October 10, 2009, the deadline for Respondent's submission of his October quarterly report, no report had been submitted by him. On November 10, 2009, the Office of Probation sent another letter to Respondent, notifying him that his October 2009 quarterly report had not been received. On November 17, 2009, Respondent spoke with the Office of Probation and was again advised to submit his October report. He then filed the October quarterly report on November 19, 2009.

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<sup>1</sup>References to sections are to the provisions of the Business and Professions Code.

On the January 10, 2010, the deadline for Respondent's submission of his January 2010 quarterly report, no report had been submitted by him. That quarterly report was submitted on January 13, 2010.

Quarterly reports were required to be submitted by Respondent on April 10, 2010 and July 10, 2010. Respondent failed to submit any quarterly report at all for these two quarters.

On January 22, 2010, Respondent again telephoned the Office of Probation and was advised that the next Ethics School and CTA School sessions in Los Angeles were to be held on February 11 and 12, 2010. The Office of Probation also told him that the compliance deadline date was February 28, 2010. Despite having been reminded of his obligation to take and pass these two programs, the Office of Probation did not receive proof that Respondent has completed any Ethics School or CTA School session and no request for an extension of time has been made or granted.

Respondent willfully violated his probation conditions ordered by the Supreme Court in its January 29, 2009 order by failing to do the following:

1. Timely submit three quarterly reports (due July 10 and October 10, 2009; January 10, 2010) and submit two quarterly reports (due April 10 and July 10, 2010);
2. Provide proof of attendance at an Ethics School session by February 28, 2010; and
3. Provide proof of attendance at a CTA School session by February 28, 2010.

As a result, the revocation of Respondent's probation in California Supreme Court case No. S168792 is warranted.

#### **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).)

## **Aggravation**

In aggravation, Respondent has one prior record of discipline. (Std. 1.2(b)(i).) In the underlying matter, effective February 28, 2009, Respondent was ordered suspended for one year, stayed, and placed on probation for two years with an actual suspension of 90 days for his professional misconduct in one client matter – failing to perform services competently and failing to maintain client funds. (Supreme Court case No. S168792; State Bar Court case No. 06-O-13653.)

Respondent committed multiple acts of wrongdoing, including failing to timely submit three quarterly reports, failing to submit two quarterly reports and failing to provide proof of attendance at the State Bar Ethics School and the State Bar CTA School. (Std. 1.2(b)(ii).)

An attorney's continued failure to comply with his 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 his probation was filed in July 2010, which put Respondent on notice that his probation status was in jeopardy and that his past quarterly reports were delinquent, Respondent still failed to timely submit his quarterly reports or provide proof of attendance of the required courses.

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

## **DISCUSSION**

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

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.) Respondent's prior misconduct and his present probation violations involve inattention to his professional duties and a continued unwillingness or inability to conform to the standards required of attorneys licensed in this state. 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, supra*, 4 Cal. State Bar Ct. Rptr. at p. 574.)

## RECOMMENDATION

### Discipline

The court recommends that the probation of Respondent **Lucio Gascon Calungcagin, Jr.**, previously ordered in Supreme Court Case No. S168792 (State Bar Court case No. 06-O-13653) be revoked; that the previous stay of execution of the suspension be lifted; and that Respondent be actually suspended from the practice of law for one year.

### California Rules of Court, Rule 9.20

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.<sup>2</sup>

### Multistate Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination since he was previously ordered to do so in S168792.

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<sup>2</sup> Respondent 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. Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.)

**Costs**

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).<sup>3</sup> This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: September 8, 2010

  
DONALD F. MILES  
Judge of the State Bar Court

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<sup>3</sup>The court recommends that any period of involuntary inactive enrollment be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

**CERTIFICATE OF SERVICE**

[Rule 62(b), Rules Proc.; 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 September 8, 2010, 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:

**LUCIO G. CALUNGCAGIN JR  
1325 S EMPIRE ST  
ANAHEIM, CA 92804**

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

**TERRIE GOLDADE, Probation Dept., Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 8, 2010.



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Tammy Cleaver  
Case Administrator  
State Bar Court