

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-PM-10155-RAP
)	
SARA SMITH RAY)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 140564)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **Sara Smith Ray** (“respondent”) is charged with violating her 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 her 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 her 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 two years and until she establishes her rehabilitation, fitness to practice, and learning and ability in the law in accordance with standard 1.4(c)(ii) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.¹

¹ All references to standard(s) are to this source.

II. Pertinent Procedural History

On January 12, 2011, 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 5.310, et seq. Respondent did not file a response, as required by rule 5.314(B) of the Rules of Procedure. The court ultimately took this matter under submission on February 8, 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(C).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 6, 1989, and has since been a member of the State Bar of California.

B. Probation Conditions in Supreme Court Case No. S184616

On September 15, 2010, in Supreme Court case no. S184616, the California Supreme Court ordered that:

1. Respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that she be placed on probation for three years subject to the condition that she be actually suspended for the first 45 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 Order Approving Stipulation filed on May 27, 2010 (State Bar Court case no. 08-O-12726), 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 Rules of Professional Conduct;
 - b. Within thirty (30) days from the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent’s assigned probation deputy to discuss the terms and conditions of probation;

- c. 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 respondent 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. Within sixty (60) days of the effective date of the discipline, respondent must develop a law office management/organization plan, which must be approved by the Office of Probation; and
- e. Within 30 days of the effective date of the discipline, respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay dues and costs of enrollment for two (2) years. Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation in the first report required.

Notice of the September 15, 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 6002.1.² The Supreme Court order became effective on October 15, 2010.

C. Probation Violations

On or about September 21, 2010, the Office of Probation sent a letter to respondent at her official address, outlining the terms and conditions of her probation. This letter was not returned to the Office of Probation as undeliverable, or for any other reason.

On November 16, 2010, a representative from the Office of Probation telephoned respondent’s disciplinary counsel, Ed Lear (“Lear”), and left a message inquiring whether Lear was representing respondent in her probation. That same day, the Office of Probation received a telephone call from Lear’s secretary stating that Lear was not representing respondent in her probation.

² All references to section(s) are to the Business and Professions Code, unless otherwise stated.

On November 30, 2010, a representative from the Office of Probation telephoned respondent at her membership records telephone number and left her a voice mail requesting a return call. Respondent did not return this phone call.

On November 30 and December 16, 2010, a representative from the Office of Probation checked the State Bar of California's attorney search function for respondent to determine whether she had joined the Law Practice Management and Technology Section. On both dates, the website reflected that respondent had not joined any sections.

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

1. Contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the terms and conditions of probation within thirty (30) days from the effective date of discipline;
2. Timely submit with the Office of Probation her first quarterly report, due January 10, 2011;
3. Develop a law office management/organization plan approved by the Office of Probation within sixty (60) days of the effective date of the discipline; and
4. Furnish satisfactory evidence of membership in the Law Practice Management and Technology Section of the State Bar of California to the Office of Probation in her first required quarterly report.

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 her probation and that those violations were willful. Respondent's willful probation violations warrant the revocation of her 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. (Std. 1.2(e).)

B. Aggravation

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

On September 15, 2010, the California Supreme Court, in the underlying matter, issued an order (S184616) suspending respondent from the practice of law for two years, staying execution of the suspension, placing her on probation for three years, with a 45-day actual suspension. In this single-client matter, respondent failed to perform legal services and failed to respond to client inquiries. In addition, respondent committed an act involving moral turpitude by creating false documents and providing them to a State Bar investigator. In aggravation, respondent committed multiple acts of misconduct. In mitigation, respondent cooperated with the State Bar and had no prior record of discipline.

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 she intends to comply with the conditions of her 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, her lack of participation in these proceedings, and her 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 her on probation subject to conditions.

The prior disciplinary order “provided [respondent] an opportunity to reform [her] conduct to the ethical strictures of the profession. [Her] culpability in [the matter] presently under consideration sadly indicates either [her] 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 her stayed suspension be imposed.

VI. Recommended Discipline

Accordingly, the court recommends as follows:

1. That the probation of respondent **Sara Smith Ray** previously ordered in Supreme Court case no. S184616 (SBC case no. 08-O-12726) 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 two years, and she will remain suspended until the following requirement is satisfied:
 - i. She must provide proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law before her suspension will be terminated.
(Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, std. 1.4(c)(ii).)

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.³

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination as she was previously ordered to do so in Supreme Court matter S184616.

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.

³Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VIII. Order of Involuntary Inactive Enrollment

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).⁴ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: February 15, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court

⁴Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)