

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 11-PM-15183-LMA
)	
SUSAN L. DILL)	DECISION INCLUDING ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 132607)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

The Office of Probation (OP), represented by Terrie Goldade, filed a motion pursuant to Business and Professions Code, section 6093, subdivisions (b) and (c)¹ and rules 5.310, et seq., Rules Proc. of State Bar² to revoke the probation of respondent Susan L. Dill. Respondent did not participate in this proceeding although she was properly served with the motion by certified mail, return receipt requested, and by regular mail, at her State Bar membership records address.

For the reasons stated below, the court finds by a preponderance of the evidence that respondent wilfully failed to comply with the terms of her probation. (Section 6093, subd. (c).) As a result, the court grants OP's motion to revoke her probation and its request to involuntarily enroll her as an inactive member of the State Bar pursuant to section 6007, subdivision (d). The court recommends that respondent's probation be revoked, that the previously-ordered stay be lifted and that she be actually suspended from the practice of law for two years and until she

¹Future references to section are to this source.

²Future references to rule are to this source.

complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.³

FINDINGS OF FACT

Jurisdiction

Respondent was admitted to the practice of law in California on December 11, 1987, and has been a member of the State Bar at all times since.

Probation Violations

On October 25, 2010, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case no. 10-J-00535 recommending discipline consisting of two years' stayed suspension and two years' probation on conditions, including 30 days' actual suspension, among other things. A copy of the stipulation and the State Bar Court's order approving same were properly served upon respondent on that same date at her State Bar membership records address by first-class mail, postage prepaid.

On March 1, 2011, the California Supreme Court filed an order, S189038, accepting the State Bar Court's discipline recommendation and ordering respondent to comply with the conditions of probation recommended, including the following, with which respondent did not comply:

(a) Within 30 days of the effective date of discipline, contacting the OP to schedule a meeting to discuss the terms and conditions of probation. Respondent did not contact the OP by April 30, 2011, and has not had the requisite meeting; and

(b) During the period of probation, submitting a written report to the OP on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect stating under penalty of perjury that she has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report). Respondent has not submitted the quarterly report due on the 10th of July 2011.

The Supreme Court order became effective on March 31, 2011, thirty days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent.⁴

³ Future references to standard or std. are to this source.

On March 15, 2011, the OP wrote a letter to respondent, properly sent to her at her official address, reminding her of certain terms and conditions of her suspension and probation imposed pursuant to the Supreme Court's order and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation and instruction sheets or forms to use in submitting quarterly reports.

On May 5, 2011, the OP sent respondent a letter to her official address indicating that she had not contacted the OP to discuss the terms and conditions of her probation by April 30, 2011.

Neither correspondence was returned to the OP.

On May 9, 2011, respondent telephoned the OP to inquire about the ramifications of resigning with charges pending. She was referred to the Office of the Chief Trial Counsel. She stated that she would call the OP back after calming down and deciding whether she was going to complete probation. There has been no further contact with respondent.

Respondent did not comply with the conditions of probation as set forth above.

CONCLUSIONS OF LAW

Pursuant to section 6093, subdivisions (b) and (c) and rule 561, the court concludes that OP has demonstrated by a preponderance of the evidence that respondent wilfully violated the conditions of probation regarding contacting and meeting with the OP and filing quarterly reports, as ordered by the Supreme Court in S189038, as more fully set forth above.

AGGRAVATING CIRCUMSTANCES

In aggravation, respondent has one prior record of discipline. (Std. 1.2(b)(i).) In S189038, respondent and the State Bar stipulated to culpability in one client matter of violations of rules 4-100(A), (B)(3) and (B)(4) of the Rules of Professional Conduct. There were no

⁴Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his or her duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

aggravating factors. Mitigating factors included candor and cooperation, remorse and good character references.

Respondent significantly harmed the administration of justice as her failure to comply with the conditions of her probation made it more much difficult for the State Bar to appropriately monitor her in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

MITIGATING CIRCUMSTANCES

It is respondent's burden to establish mitigating factors, but she did not participate in this proceeding. Accordingly, no mitigating factors are found.

DISCUSSION

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.7 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding, but any actual suspension cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rule 5.312.) The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of her misconduct and her efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The court agrees with the OP's request that respondent be actually suspended for the full amount of stayed suspension. Respondent was aware of the terms and conditions of her disciplinary probation because she stipulated to them, yet she failed to comply with them.

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.) Accordingly, after considering the misconduct and the aggravating and mitigating circumstances, the court recommends, among other things, two years of actual suspension to continue until she complies with Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.4(c)(ii), during which time she will have the

opportunity of demonstrating that she is desirous and able to meet these important ethical obligations in the timely and serious fashion expected of California attorneys. The court expects no less from respondent.

DISCIPLINE RECOMMENDATION

The court recommends that the probation of respondent SUSAN L. DILL, previously ordered in Supreme Court case matter S189038 (State Bar Court case no. 10-J-00535), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent be actually suspended for two years and until she provides proof to the satisfaction of the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct;

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.⁵

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination as she was ordered to do so in Supreme Court matter S189038 (State Bar Court case no. 10-J-00535).

COSTS

It is recommended 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.

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation

⁵Respondent is required to file a rule 9.20(c) affidavit even if she has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

conditions, and it has been recommended that respondent be actually suspended due to said violations.

IT IS THEREFORE ORDERED that respondent SUSAN L. DILL, be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order.

IT IS ALSO ORDERED that her inactive enrollment be terminated as provided by Business and Professions Code section 6007, subdivision (d)(2).

IT IS RECOMMENDED that respondent's actual suspension in this matter commence as of the date of her inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: October ____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court