

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 11-PM-17824-RAP (S187668)
)	
STEPHEN PAUL NARATIL,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND FOR
Member No. 174825,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction¹

In this probation revocation proceeding, respondent **Stephen Paul Naratil** 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, that respondent be suspended from the practice of law for two years, that

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

execution of the suspension be stayed, that he be placed on probation for two years, and that he be actually suspended for one year and until he makes restitution.

Significant Procedural History

On October 24, 2011, 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.

The court took this matter under submission on November 21, 2011.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 9, 1994, and has been a member of the State Bar of California at all times since that date.

Facts

On January 11, 2011, in Supreme Court case No. S187668, 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, and that he be placed on probation for two years, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed September 23, 2010 (State Bar Court case Nos. 06-O-14047 (07-O-11392; 08-O-10609; 10-O-05062)); and
2. Respondent comply, among other things, with the following probation conditions:
 - A. During the period of probation, respondent was required to submit a written report to the Office of Probation 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 he has complied with provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report); and

B. As a condition of probation, respondent was to pay restitution to Trent Binger in the amount of \$16,000 no later than 18 months after the effective date of the California Supreme Court order imposing discipline. Respondent was to pay Mr. Binger at least \$500 per month beginning on the 10th day of the first month after the effective date of the California Supreme Court order imposing discipline. Respondent was to provide the Office of Probation satisfactory proof of having timely paid the restitution with each quarterly report.

The Supreme Court order became effective on February 10, 2011, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.²

On March 8, 2011, the Office of Probation wrote a letter to respondent, properly sent to him at his official address, reminding him of certain terms and conditions of his suspension and the 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.

During their March 25, 2011 telephonic meeting, respondent told the probation deputy that he may have problems complying with his financial obligations. He was advised that the probation deputy could not excuse him.

²Although 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. 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 duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

On May 9, 2011, the Office of Probation sent another letter to respondent, reminding him of his obligation to make restitution and advising him that he could file a motion to modify the probation conditions. None of the letters were returned as undeliverable.

On October 4, 2011, the Office of Probation telephoned respondent and told him that he was about \$3,500 behind in payments. He indicated that he would make a payment or file a motion within the next week. He was again reminded that his quarterly report was due and that Ethics School and MPRE proof would be due February 10, 2012. Although he attached a copy of the front of a check made payable to Mr. Binger dated October 6, 2011, in the amount of \$500, he did not provide satisfactory proof that the payment was made. Thus, that payment could not be credited to his restitution requirement.

Respondent was late in filing two quarterly reports – he filed the April 10, 2011 quarterly report on April 11, 2011, and the October 10, 2011 quarterly report on October 12, 2011.

He was supposed to have begun making monthly payments of \$500 on March 10, 2011. To date, respondent has provided satisfactory proof of only one payment of \$500 to Mr. Binger, which was posted July 12, 2011. He thus owed Mr. Binger \$3,500 as of October 10, 2011.

Conclusions

Section 6093, subdivision (b), provides that violation of a probation condition constitutes cause for revocation of any probation then pending and may constitute cause for discipline. Section 6093, subdivision (c), provides that the standard of proof is the preponderance of the evidence. Bad faith is not a requirement for a finding of culpability in a probation violation matter. Instead, a general purpose or willingness to commit an act or permit an omission is sufficient. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

Respondent did not comply with each of the conditions of probation as set forth above. He was late in filing his quarterly reports. And, he was supposed to have made eight monthly

payments (a total of \$4,000) by October 10, 2011. Instead, he only made one payment of \$500 in July. He thus violated the restitution requirement.

As a result, the revocation of respondent's probation in California Supreme Court order No. S187668 is warranted.

Aggravation³

Prior Record of Discipline (Std. 1.2(b)(i).)

Respondent has one prior record of discipline. In the underlying matter, effective February 10, 2011, respondent was ordered suspended for one year, stayed, and placed on probation for two years for sharing legal fees with a non-attorney in one matter and failing to return unearned fees in three client matters. (Supreme Court case No. S187668; State Bar Court case Nos. 06-O-14047; 07-O-11392; 08-O-10609; 10-O-05062.)

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent committed multiple acts of wrongdoing, including submitting two late quarterly reports and failing to make seven monthly restitution payments.

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

Respondent's failure to make the monthly restitution payments, a total of \$3,500, caused his client significant financial harm.

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)

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. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.)

³ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Although the motion to revoke his probation was filed in October 2011, which put respondent on notice that his probation status was in jeopardy and that his restitution payments were delinquent, respondent still failed to make any additional payments or file a motion with the court.

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.2(b)(vi).)

Respondent's failure to participate in this proceeding is also an aggravating factor.

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).)

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. (Rules Proc. of State Bar, 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 his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The Office of Probation requested that respondent be actually suspended for the full amount of stayed suspension and that he remained suspended until he makes full restitution. The court agrees. (See *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81; *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737.)

Recommendations

The court recommends that the probation of respondent **Stephen Paul Naratil**, member No. 174825, imposed in Supreme Court case matter S187668 (State Bar Court case Nos. 06-O-

14047; 07-O-11392; 08-O-10609; 10-O-05062) be revoked; that the previous stay of execution of the suspension be lifted; that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed; and that respondent be placed on a new period of probation for two years subject to the following conditions:

1. Respondent **Stephen Paul Naratil** is suspended from the practice of law for a minimum of the first year of probation, and respondent will remain suspended until the following requirements are satisfied:
 - A. Respondent must make restitution to Trent Binger in the amount of \$15,500⁴ (or reimburse the Client Security Fund, to the extent of any payment from the fund to Trent Binger, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
 - B. Respondent must make restitution to Judith Binger⁵ in the amount of \$14,000 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Judith Binger, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d); and
 - C. If respondent remains suspended for two years or more as a result of not satisfying the preceding requirements, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

⁴ If respondent provides satisfactory proof to the Office of Probation that he made additional payments to Mr. Binger, then the remaining restitution balance of \$15,500 should be adjusted accordingly.

⁵ As a condition of probation in California Supreme Court order S187668, respondent was to pay restitution to Judith Binger in the amount of \$14,000 no later than 18 months after the effective date of the California Supreme Court order.

4. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
6. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was ordered to do so in Supreme Court case matter S187668.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a)

and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.⁶

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 of Involuntary Inactive Enrollment

Section 6007, subdivision (d)(1), provides for an attorney's involuntary inactive enrollment for violating probation if: (A) the attorney is under a suspension order any portion of which has been stayed during a period of probation, (B) the court finds that probation has been violated, and (C) the court recommends that the attorney receive an actual suspension due to the probation violation or other disciplinary matter. The requirements of section 6007, subdivision (d)(1) have been met.

Respondent is ordered to be involuntarily enrolled inactive under section 6007, subdivision (d)(1).⁷ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: December 14, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court

⁶ 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.)

⁷The 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).)