

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case No.: 11-PM-18515-DFM  
 )  
MANUEL ANGEL GONZALEZ )  
 ) DECISION  
Member No. 219130 )  
 )  
A Member of the State Bar. )

INTRODUCTION

On November 15, 2011, the State Bar Office of Probation, represented by Terrie Goldade, filed a motion pursuant to Business and Professions Code sections 6093<sup>1</sup> and rules 5.310 et seq. of the Rules Proc. of State Bar<sup>2</sup> to revoke the probation of Respondent Manuel Angel Gonzalez (Respondent). On December 7, 2011, Respondent filed a written response to the motion, requesting a hearing. Neither side requested an opportunity to cross-examine any individual executing declarations in the matter.

A hearing of the motion was held on January 5, 2012.

For the reasons stated below, the court finds by a preponderance of the evidence that Respondent willfully failed to comply with the terms of his probation. (Section 6093, subd. (c).) As a result, the court grants the motion of the Office of Probation to revoke Respondent’s probation and its request to involuntarily enroll him as an inactive member of the State Bar

---

<sup>1</sup>Future references to section(s) are to this source.

<sup>2</sup>Future references to rule(s) are to this source.

pursuant to section 6007, subdivision (d). The court recommends that Respondent's probation be revoked, that the previously-ordered stay of suspension be lifted, and that Respondent be actually suspended from the practice of law for one year and until he pays the restitution that had previously been ordered.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Jurisdiction**

Respondent was admitted to the practice of law in California on April 29, 2002, and has been a member of the State Bar at all times since.

### **Probation Violations**

On December 7 and 21, 2010, the State Bar Court filed orders approving the stipulation of the parties in State Bar Court case nos. 07-O-13329, 07-O-13827, 08-O-13980, 09-O-18923, 09-O-12664, 09-O-17424, and 10-O-03257 and recommending discipline consisting of two years' stayed suspension and two years' probation, including sixty (60) days' actual suspension.

On April 27, 2011, the California Supreme Court filed an order, S190664, accepting the State Bar Court's discipline recommendation and ordering Respondent to comply, *inter alia*, with the following conditions of probation:

(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 all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report).

(b) During the period of probation, Respondent was required to make restitution payments on a monthly installment basis to five former clients and to provide satisfactory proof to the Office of Probation with each quarterly report of his compliance with this restitution obligation. A monthly installment payment of \$110.00 was ordered to be made by Respondent to each of the five former clients. The cumulative restitution obligation for all five clients totaled \$14,775, with \$3,500 being the largest amount owed to any one individual.

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

On May 24, 2011, the Office of Probation wrote a letter to Respondent, reminding him of the terms and conditions of his suspension and of 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, instruction sheets and forms to use in submitting quarterly reports, and an instruction sheet regarding submitting proof of his restitution payments.

The Office of Probation alleges in its motion to revoke Respondent's probation that he willfully violated the conditions of his probation in two respects. First, it contends that he failed to submit the report due on October 10, 2011 on a timely basis. That report was received on October 11, a day late. Second, it contends that Respondent has willfully failed to make the monthly restitution payments and to provide the required proof of such payments to the Office of Probation.

This court declines to find that Respondent's handling of the October 10 quarterly report constitutes a willful violation of his probation warranting a revocation of that probation or additional discipline. It is uncontradicted that Respondent completed and sent the form via Federal Express to the Office of Probation on Saturday, October 8, 2011, in time for it to be delivered on Monday, October 10. In 2011, however, Columbus Day fell on that Monday. Columbus Day is not a federal holiday and is not treated as a holiday by most government agencies or all courts. It is not even listed as a state holiday by all California state agencies. It is, however, treated as a holiday by the State Bar. There is no indication that the Office of Probation or anyone else had ever provided Respondent with advance notice of that fact. Given that the first and second days of the ten-day period for the quarterly report to be completed in October 2011 were on a week-end and the Office of Probation contends that the completed report had to be received by the close of business on the seventh day of the normal ten-day window, technical compliance with submitting that particular quarterly report was going to be unexpectedly difficult. That Respondent sought to comply in a timely manner and would have,

but for the State Bar holiday, negates any need to revoke his probation or to impose additional discipline.

This court reaches a far different conclusion with regard to Respondent's failure to make the required monthly restitution installment payments and to provide the required proof of payments. The only effort Respondent has made to make the required monthly payments since the Supreme Court's order became effective was to purchase money orders in the amount of \$110 for each of the five former clients on July 8, 2011; copy the front of these five money orders; and then attach those copies of the five money orders to the Quarterly Report he was executing on that very same day. Although the Office of Probation subsequently asked for proof that these money orders had actually been sent to the former clients and cashed, no such proof has ever been provided by Respondent.<sup>3</sup>

More significantly, since July 2011, Respondent has failed completely to make any additional payments to any of the five former clients, despite being reminded in October 2011 by the Office of Probation of his obligation to do so. In his response to the instant motion, Respondent contends that he was financially unable to do so. His response, however, did not include a financial declaration or equivalent accounting record, and no effort was ever made by Respondent to seek from this court any modification of his restitution order prior to the filing of the revocation order.

This conduct constitutes willful and ongoing violations by Respondent of an important component of his probation and warrants the revocation of that probation and the imposition of additional discipline.

### **Aggravating Circumstances**

#### **Prior Discipline**

In aggravation, Respondent has one prior record of discipline. (Std. 1.2(b)(i).) As noted above, Respondent has a prior record of discipline consisting of the underlying disciplinary

---

<sup>3</sup> At the hearing of this matter, Respondent stated during argument that two of the money orders had been cashed. That comment, however, was not under penalty of perjury. As a result, the court makes no finding that any of the required payments has ever been made.

matter—Supreme Court Case No. S190664. In that stipulated matter, Respondent was found culpable of misconduct involving seven different client matters. His misconduct included three counts of failing to perform legal services with competence, four counts of failing to properly communicate with his client, three counts of failing to provide an accounting to his client, five counts of failing to return unearned fees, and three counts of failing to release a client’s file on request. Respondent received, among other things, a two-year stayed suspension, with two years’ probation, and a 60-day actual suspension.

**Multiple Acts of Misconduct**

Respondent engaged in multiple acts of misconduct. (Std. 1.2(b)(ii).)

**Indifference**

Respondent’s failure to comply with the probation conditions, after being reminded by Office of Probation, demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

**Mitigating Circumstances**

It is Respondent’s burden to establish mitigating factors. Although Respondent argues that financial hardship is a mitigating factor, the evidence he offered in support of that contention was insufficient.

**DISCUSSION**

Section 6093 authorizes the revocation of probation for a violation of a probation condition. Standard 1.7 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding. 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.)

In the case of *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, the Review Department recommended one-year of actual suspension for that respondent’s failure to make restitution payments and file quarterly reports. Although the State Bar asks that

the entire two-year stayed suspension be imposed, the court believes that a one-year minimum level of actual suspension is appropriate.<sup>4</sup>

The State Bar also urges that the period of actual suspension continue until Respondent has paid all of the restitution amounts previously ordered by the Supreme Court. This court agrees with that recommendation. (See *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81, 88.) Unlike the situation in *Broderick*, Respondent has demonstrated a continuing indifference to his obligation to return unearned fees to his five clients, even though he had just been disciplined by the Supreme Court for his failure to return those fees in the past. "The primary aims of attorney disciplinary probation are the protection of the public and the rehabilitation of the attorney. (*In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 299.) "If we measure an attorney's violations of probation against those aims, the greatest amount of discipline would be merited for violations which show a breach of a condition of probation significantly related to the misconduct for which probation was given. This would be especially significant in circumstances raising a serious concern about the need for public protection or showing the probationer's failure to undertake rehabilitative steps." (*In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 78, quoting *In the Matter of Potack*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

### **RECOMMENDED DISCIPLINE**

#### **Probation Revocation/Suspension/Probation**

For all of the above reasons, the court recommends that the probation of Respondent **Manuel Angel Gonzalez**, Member No. 219130, previously ordered in Supreme Court case matter S190664 (State Bar Court case no. 07-O-13329, et al), be revoked; that the previous stay

---

<sup>4</sup> Although Respondent here is not culpable of repeatedly failing to file quarterly reports, as was the respondent in *Broderick*, Respondent's failure to make restitution payments is significantly more extensive here. The *Broderick* court also found considerably more mitigating factors than are present here.

of execution of the suspension be lifted, that Respondent be suspended from the practice of law for two years; that execution of that suspension be stayed; and that Respondent be placed on probation for two years, with the following conditions:

**Conditions of Probation**

**Actual Suspension**

- Respondent must be actually suspended from the practice of law for a minimum of the first one year of probation and until he has provided proof of having made complete restitution to each and all of the payees set forth below. Further, if Respondent is actually suspended for two years or more, he must remain actually suspended until he proves to the State Bar Court his rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

**Restitution Obligation/Monthly Installment Payments**

- Respondent must pay restitution to the payees listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payees for all or any portion of the principal amounts listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

<u>Payee</u>	<u>Total Amount</u>	<u>Monthly Installment</u>
William Warren	\$3,000	\$110.00
Edilberto Rodriquez	\$3,000	\$110.00
Maria Isabel Mojica-Roman	\$2,750	\$110.00
Roberto Julian-Galicia	\$2,525	\$110.00
Gerardo Montoya aka Gerardo Munoz or Lorena Munoz	\$3,500	\$110.00

- Respondent must pay the above-referenced Total Amount of restitution for each listed payee no later than 30 days prior to the expiration of the period of probation and provide

satisfactory proof of such payment(s) to the Office of Probation not later than the completion of his period of probation.

- In addition to the obligation to pay the Total Amount of restitution during the period of probation, Respondent must make minimum monthly restitution payments to each of the above payees in the Monthly Installment amount set forth above until the restitution obligation owed to such payee is paid in full. Such payments must be made by no later than the 15<sup>th</sup> day of each month. Respondent must provide satisfactory proof of payment of such monthly installments to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation, Respondent must make any necessary final payment(s) in order to complete the payment of restitution in full.

#### **Additional Conditions of Probation**

- Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
- Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office

*and* the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

- Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Respondent is on probation (reporting dates).<sup>5</sup> However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

(a) In the first report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

(b) In each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

(c) During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must

---

<sup>5</sup> To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

- Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.
- Within one year after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)
- Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

**Rule 9.20, California Rules of Court**

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.<sup>6</sup>

---

<sup>6</sup>Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

## MPRE

Because Respondent was ordered by the Supreme Court to take and pass the MPRE in its order of April 27, 2011, the court does not recommend that Respondent be further ordered in this matter to take and pass that examination.

## 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

It is hereby ORDERED that Respondent **Manuel Angel Gonzalez**, Member No. 219130, 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. The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that Respondent be actually suspended due to said violations.

It is also ordered that his inactive enrollment be terminated as provided by Business and Professions Code section 6007, subdivision (d)(2).

Finally, it is recommended that Respondent's actual suspension in this matter commence as of the date of his inactive enrollment pursuant to this order. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

Dated: February \_\_\_\_\_, 2012

---

DONALD F. MILES  
Judge of the State Bar Court