

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-PM-11285-DFM
)	
CHARLES DAVID TREJO,)	
)	ORDER GRANTING MOTION TO
Member No. 187529,)	REVOKE PROBATION & ORDER OF
)	INACTIVE ENROLLMENT (Bus. & Prof.
A Member of the State Bar.)	Code, § 6007, subd. (d)(1))
_____)	

INTRODUCTION

In this probation revocation proceeding (Bus. & Prof. Code, § 6093; Rules Proc. of State Bar, rule 5.310 et seq.), the State Bar's Office of Probation charges respondent **CHARLES DAVID TREJO**¹ with violating three of the conditions of probation that were imposed on him under the Supreme Court's December 12, 2011 order in *In re Charles David Trejo on Discipline*, case number S196896 (State Bar Court case number 11-O-11527) (*Trejo II*).

As set forth below, the court finds, by a preponderance of the evidence, that respondent is culpable of willfully violating three of his probation conditions in *Trejo II*. Accordingly, the court will grant the motion to revoke respondent's probation and recommend that respondent be placed on two years' (actual) suspension continuing until respondent (1) makes restitution as

¹ Respondent was admitted to the practice of law in this state on January 28, 1997, and has been a member of the State Bar of California since that time. He has two prior records of discipline.

previously ordered in *Trejo II*; (2) attends and successfully completes the State Bar's Ethics School as previously ordered in *Trejo II*; and (3) establishes his rehabilitation, fitness to practice, and learning in the law in accordance with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii).²

Moreover, the court finds that it is appropriate to order that respondent be involuntarily enrolled as an inactive member of the State Bar of California pending the final disposition of this proceeding or further court order. (Bus. & Prof. Code, § 6007, subd. (d)(1); *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531-532.)

PERTINENT PROCEDURAL HISTORY

On February 23, 2012, the Office of Probation filed the motion to revoke probation in this proceeding and, in accordance with Business and Professions Code section 6002.1, subdivision (c)³ and Rules of Procedure of the State Bar, rules 5.25 and 5.314(A), properly served a copy of the motion on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar. That service was deemed complete when mailed even if respondent never received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.) In addition, the Office of Probation mailed a courtesy copy of the motion to respondent by first class mail, regular delivery. (See also *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

On March 19, 2012, the Office of Probation filed a request to have the court take judicial notice of certified copies of respondent's two prior records of discipline. At the request of the Office of Probation and on the court's own motion, the court takes judicial notice of the certified

² All further references to standards are to this source.

³ Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

copies of respondent's two prior records of discipline that are attached to the Office of Probation's March 19, 2012 request.

Respondent never filed a response to the motion to revoke probation, and the time for respondent to do so under Rules of Procedure of the State Bar, rule 5.314(B) has expired. The Office of Probation did not request a hearing on its motion. Accordingly, on March 21, 2012, the court filed an order taking the motion to revoke probation under submission for decision without a hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exhibits 1, 2, and 3 that are attached to the motion to revoke probation are received into evidence. (Rules Proc. of State Bar, rule 5.314(H).) Because respondent failed to file a response to the motion to revoke probation, the court treats the *factual* allegations in the motion as admissions (but not the legal conclusions or the charges). (Rules Proc. of State Bar, rule 5.314(C).)

The Supreme Court's December 12, 2011 order in *Trejo II* became effective on January 11, 2012, and has remained in effect since that time. At all times material to the motion to revoke probation, respondent had actual notice of that order.

A. Probation Deputy Meeting Condition

Respondent was required to "contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation" no later than February 10, 2012. The record establishes that respondent willfully violated his probation-deputy-meeting condition because he did not contact the Office of Probation and make an appointment with his probation monitor by the February 10, 2012 deadline. Even though respondent telephoned the Office of Probation on February 15, 2012, he did not schedule a

meeting with his probation monitor. Further the required and important meeting has never taken place.

B. Multistate Professional Responsibility Examination (MPRE) Condition

Respondent's was required to register for the November 5, 2011 MPRE and provide proof that he passed that examination to the Office of Probation within 30 days of receiving the results from the National Conference of Bar Examiners. Respondent willfully violated this MPRE condition by not even registering for the November 5, 2011 examination.

C. Ethics School Condition

Respondent's was required to register for and attend the August 4, 2011 session of Ethics School and provide proof of his attendance at a session of Ethics School and of his passage of the test given at the end of the session to the Office of Probation within 30 days of the effective date of the Supreme Court's December 12, 2011 order in *Trejo II*, which was February 10, 2012. Respondent willfully violated that Ethics-School condition by not even registering for the August 4, 2011 session. Nor did he otherwise provide the Office of Probation with proof of his attendance at a session of Ethics School either before or after the February 10, 2012 deadline.

AGGRAVATION AND MITIGATION

Aggravation

1. Prior Records of Discipline

Respondent has two prior records of discipline, which are serious aggravating circumstances. (Std. 1.2(b)(i).)

a. *Trejo I*

Respondent's first prior record of discipline is the Supreme Court's January 12, 2010 order in *In re Charles David Trejo on Discipline*, case number S177762 (State Bar Court case number 08-O-12444) (*Trejo I*) in which the Supreme Court placed respondent on two years'

stayed suspension and two years' probation on conditions, including a forty-five day (actual) suspension. The Supreme Court imposed that discipline on respondent in accordance with a stipulation that respondent entered into with the State Bar and that was approved by the State Bar Court in an order filed on September 15, 2009, *Trejo I*. That stipulation establishes that respondent was culpable on the following four counts of misconduct involving a single client matter: (1) willfully failing to perform legal services competently (Rules Prof. Conduct, rule 3-110(A)); (2) willfully failed to communicate (§ 6068, subd. (m)); (3) failing to pay a \$540 superior court sanction order (§ 6103); and (4) making false and misleading statements to the client to conceal the dismissal of the client's lawsuit (§ 6106).

The stipulation in *Trejo I* further establishes, in aggravation, that respondent's misconduct involved multiple acts of misconduct, was surrounded by dishonesty and concealment, and caused significant harm to the client and the administration of justice and that respondent demonstrated a lack of respect for the superior court and indifference toward rectification of, or atonement for, the consequences of his misconduct.

The stipulation further establishes, in mitigation, that respondent had no prior record of discipline at the time, cooperated with the State Bar by entering into the stipulation, established his good character, suffered from severe financial stress (respondent and his wife owed about \$80,000 in tax liens for back taxes), and had extreme difficulties in his family life (respondent and his wife had marital problems resulting from the tax liens and other economic losses).

b. *Trejo II*

Respondent's second prior record of discipline is the Supreme Court's December 12, 2011 order in *Trejo II*. In that order, the Supreme Court placed respondent on two years' stayed suspension and two years' probation on conditions, including a sixty-day (actual) suspension. The Supreme Court imposed that discipline on respondent in accordance with a stipulation that

respondent entered into with the State Bar and that was approved by the State Bar Court in an order filed on August 11, 2011, in *Trejo II*. That stipulation establishes that respondent willfully violated his duty, under section 6068, subdivision (k), to comply with the conditions of probation imposed on him in *Trejo I*.

Specifically, the stipulation establishes that respondent failed to (1) pay any portion of the required restitution;⁴ (2) take the MPRE; (3) attend Ethics School; (4) complete any of the required six hours of Minimum Continuing Legal Education courses; (5) develop an approved law-office-management plan by May 12, 2010 (respondent's plan was more than a year late); (6) join the Law Practice Management and Technology Section of the State Bar of California by March 13, 2010, and provide the Office of Probation with proof thereof in his probation report due April 10, 2010 (respondent did not provide proof that he joined that section until July 28, 2010); and (7) timely submit his third and fourth probation reports (respondent's third report was more than nine months' late and his fourth report was two days' late).

The stipulation in *Trejo II* further establishes, in aggravation, that respondent had one prior record of discipline at the time. It also establishes, in mitigation, that respondent suffered from severe financial stress and had marital problems resulting from \$80,000 in tax liens and that respondent acknowledged his misconduct and cooperated with the State Bar by entering into the stipulation in *Trejo II*.

2. Multiple Acts

Respondent's present misconduct involves three violations of conditions of probation to which respondent stipulated to and that were imposed on him under the Supreme Court's December 12, 2011 order in *Trejo II*. (Std. 1.2(b)(ii).)

⁴ Respondent was required to make restitution by refunding \$2,000 in unearned fees to Adrian Dugas and paying \$540 in court-ordered sanctions to Attorney Thomas A. Collins.

Mitigation

Because respondent did not appear in this probation revocation proceeding, he did not establish any mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) Nor is any mitigating circumstance otherwise apparent from the record.

DISCUSSION

The purposes of disciplinary proceedings are to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline for respondent's probation violations, the court first considers standard 1.7(a), which provides that, when an attorney has a prior record of discipline, "the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."⁵

In addition, the court considers, inter alia, the seriousness of respondent's three probation violations; respondent's efforts, if any, to comply with the three probation conditions he violated; respondent's recognition or lack of recognition of wrongdoing; whether the conditions respondent violated are significantly related to misconduct for which the probation was imposed, to respondent's rehabilitation, or to public protection; and the total length of the stayed suspension that was imposed on him in *Trejo II* and which may be imposed on him in this

⁵ Even though respondent has two prior records of discipline, standard 1.7(b), which provides for disbarment when an attorney has two or more prior records of discipline, is not applicable in probation revocation proceedings. (*In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244, 257, fn. 13.)

proceeding under Rules of Procedure of the State Bar, rule 5.312. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

Without question, respondent's strict compliance with his MPRE and Ethics-School probation conditions are centrally related to respondent's rehabilitation and to public protection. (Cf. *Segretti v. State Bar* (1976) 15 Cal.3d 878, 890-891 & fn. 8.) Therefore, respondent's probation violations for not registering for the November 5, 2011 MPRE and for not registering for the August 4, 2011 session of Ethics School or otherwise attending any session of Ethics School are serious violations warranting significant discipline.

The probation violation proceedings *Potack v. State Bar* (1991) 54 Cal.3d 132 and *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737 are instructive on the issue of discipline. In *Luis*, the attorney failed to file two quarterly probation reports and to provide proof that he successfully completed Ethics School. The attorney in *Luis*, like respondent in the present proceeding, failed to participate in the State Bar Court probation violation proceeding and was actually suspended for three years and until he complied with standard 1.4(c)(ii). The attorney in *Luis* had one prior record of a two-year actual suspension.

In *Potack*, the attorney did not file his probation report that was due on October 10, 1988, until November 22, 1988. Moreover, the report filed on November 22, 1988, did not comply with the terms of the Supreme Court's 1986 order placing the attorney on probation. Even though the attorney was given ample opportunity to do so, he failed to file an amended report that complied with the Supreme Court's 1986 order.

The attorney in *Potack* did not participate in the State Bar Court proceeding and had one prior record of a one-year actual suspension. The Supreme Court rejected the attorney's assertion that a two-year (actual) suspension was excessive for his failure to file a single

probation report that complied with the “ ‘precise language’ ” of the court’s 1986 order and placed the attorney on two years’ actual suspension.

Collectively, respondent’s probation violations and his two prior records of discipline establish that, for whatever reason, respondent is not engaged in the rehabilitative process. Thus, the court concludes that it is appropriate to recommend that respondent’s probation in *Trejo II* be revoked and that the full two-year stayed suspension in *Trejo II* be imposed on respondent and that the two-year suspension continue not only until respondent pays restitution to Adrian Dugas and Attorney Thomas A. Collins as ordered in *Trejo II*, but also until respondent successfully completes Ethics School as ordered in *Trejo II* and until respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii). Finally, the court concludes that it is appropriate to recommend that respondent be ordered to take and pass the MPRE during the period of his suspension. (*Segretti v. State Bar, supra*, 15 Cal.3d at pp. 890-891 & fn. 8.)

ORDER AND DISCIPLINE RECOMMENDATION

The court orders that the Office of Probation’s February 23, 2012 motion to revoke the probation of respondent CHARLES DAVID TREJO is GRANTED. Accordingly, the court RECOMMENDS that the probation imposed on respondent CHARLES DAVID TREJO under the Supreme Court’s December 12, 2011 order in *In re Charles David Trejo on Discipline*, case number S196896 (State Bar Court case number 11-O-11527) be revoked; that the stay of execution of the two-year suspension in that proceeding be lifted; and that respondent CHARLES DAVID TREJO be (actually) suspended from the practice of law in the State of California for two years with credit given for the period of his involuntary inactive enrollment under this court’s order of inactive enrollment *post* (Bus. & Prof. Code, § 6007, subd. (d)(3)) and until respondent CHARLES DAVID TREJO (1) pays restitution to Adrian Dugas and Attorney

Thomas A. Collins; (2) attends and satisfactorily completes the State Bar's Ethics School as previously ordered in Supreme Court case number S196896 (State Bar Court case number 11-O-11527); and (3) provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional misconduct.

PROFESSIONAL RESPONSIBILITY EXAMINATION

The court further recommends that respondent CHARLES DAVID TREJO be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and to provide proof of his passage of that examination to the State Bar's Office of Probation in Los Angeles within the period of his suspension. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

RULE 9.20 and COSTS

The court further recommends that respondent CHARLES DAVID TREJO 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 probation revocation proceeding.⁶

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

⁶ Trejo is required to file a rule 9.20(c) compliance affidavit even if he has no clients to notify *on the date the Supreme Court files its order in this proceeding*. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) At least in the absence of compelling mitigating circumstances, an attorney's failure to comply with rule 9.20 almost always results in disbarment. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.)

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The court orders that CHARLES DAVID TREJO be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (d)(1), effective three days after service of this order by mail. Unless otherwise ordered, CHARLES DAVID TREJO'S involuntary inactive enrollment under this order will terminate, without the necessity of further court order, on the earlier of the effective date of the Supreme Court order in this matter or two years after his inactive enrollment under this order. (Bus. & Prof. Code, § 6007, subd. (d)(2); Rules Proc. of State Bar, rule 5.315.)

Dated: April ____, 2012.

DONALD F. MILES
Judge of the State Bar Court