

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case No.: 12-PM-12188-RAH (S190160)
)
HENRY ALAN PATTIZ,) DECISION AND ORDER OF
) INVOLUNTARY INACTIVE
Member No. 44073,) ENROLLMENT
)
A Member of the State Bar.)

Introduction¹

In this probation revocation proceeding, respondent Henry Alan Pattiz 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 a 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, and that he be actually suspended for one year.

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.

Significant Procedural History

On March 21, 2012, 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.

On April 2, 2012, the State Bar filed and properly served on respondent a Request for Judicial Notice, asking this court to take judicial notice of a certified copy of respondent's prior record of discipline in Supreme Court case No. S190160 (State Bar Court case No. 07-O-14357) pursuant to Evidence Code section 452, which certified copy was attached to the State Bar's request. Finding good cause, the court hereby takes judicial notice of the certified copy of respondent's prior record of discipline in Supreme Court case No. S190160 (State Bar Court case No. 07-O-14357), effective, *nunc pro tunc*, as of April 17, 2012.

On April 17, 2012, after the time for respondent to file a response to the State Bar's motion to revoke respondent's probation had expired, the court took the instant matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 29, 1967, and has been a member of the State Bar of California at all times since that date.

Facts

On April 13, 2011, in Supreme Court case No. S190160, 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 November 30, 2010 (State Bar Court case No. 07-O-14357); and

2. Respondent comply, among other things, with the following probation conditions:
 - A. Within 30 days from the effective date of discipline (i.e., by June 12, 2011), respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the probation conditions; and
 - B. During the period of probation, respondent must 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).

The Supreme Court order became effective on May 13, 2011, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.²

On April 29, 2011, the Office of Probation mailed a letter to respondent 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, including the requirement that he contact and schedule a meeting with his probation deputy by June 12, 2011. Enclosed with that letter, among

² Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, California Rules of Court, rule 8.532(a) 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.

other things, were a copy of the Supreme Court's order, the probation condition portion of the stipulation, and instruction sheets and forms to use in submitting quarterly reports.

On July 7, 2011, probation deputy Maricruz Farfan (Farfan) telephoned respondent on behalf of the Office of Probation and left a message for respondent, requesting that he return her call. On July 8, 2011, respondent returned Farfan's call. During that conversation, she reminded respondent to contact the Office of Probation to schedule his required meeting.

On July 9, 2011, Farfan emailed a letter to respondent reminding him to contact the Office of Probation after he received the email. A copy of the April 29, 2011 letter and its enclosures were included. Respondent left a voice mail message for Farfan on Saturday July 9, 2011. On July 11, 2011, Farfan returned respondent's call and left a voice mail message for him. Respondent, however, did not respond to Farfan's July 11th voice mail message; nor did he contact the Office of Probation to schedule the required meeting and no meeting occurred.

On July 11, 2011, Farfan also mailed to respondent a copy of the letter and enclosures that she had emailed to him on July 9, 2011. The letter was sent to respondent at his official membership records address.

The letters sent to respondent were not returned as undeliverable or for any other reason.

Respondent has not called the Office of Probation to schedule his meeting and no meeting has occurred. Respondent also did not timely file his first quarterly report that was due by July 10, 2011. Moreover, he has failed to file his second and third quarterly reports that were due by October 10, 2011 and January 10, 2012.

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 the conditions of probation set forth by the Supreme Court in S190160. The State Bar has shown by a preponderance of the evidence that respondent did not:

- (1) Contact the Office of Probation within 30 days of the effective date of Supreme Court order No. S190160 to schedule a meeting with his assigned probation deputy to discuss probation conditions and no such meeting has occurred;
- (2) Timely submit his first quarterly report to the Office of Probation that was due by July 10, 2011; and
- (3) Submit to the Office of Probation his second and third quarterly reports that were due by October 10, 2012 and January 10, 2012, respectively.

As a result, the revocation of respondent's probation in California Supreme Court order No. S190160 is warranted.

Aggravation³

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

Respondent has one prior record of discipline. In the underlying matter, effective May 13, 2011, respondent was ordered suspended for one year, stayed, and placed on probation for two years for: (1) engaging in the unauthorized practice of law and failing to support the laws of

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.

this state and (2) failing to cooperate with the State Bar regarding a disciplinary investigation. In aggravation, respondent's misconduct was surrounded by concealment. In mitigation, respondent had no prior record of discipline in over 39 years of practice. (Supreme Court case No. S190160; State Bar Court case No. 07-O-14357.)

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

Respondent committed multiple acts of wrongdoing, including failing to contact the Office of Probation to schedule a meeting with his assigned probation deputy, failing to timely file his first quarterly report, and failing to file his second and third quarterly reports.

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 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.) Although the motion to revoke his probation was filed in March 2012, which put respondent on notice that his probation status was in jeopardy, respondent still has not contacted the Office of Probation to schedule a meeting. Nor has he filed the October 2011 and January 2012 quarterly reports.

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. 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.)

Although respondent participated in his prior disciplinary matter, the court has no information about the underlying cause of his probation violations or of any mitigating circumstances surrounding his misconduct due to his lack of participation in this proceeding.

The Office of Probation has requested that respondent be actually suspended for the full amount of stayed suspension. The court agrees.

Here, respondent has given the court no indication that he intends to adequately comply with the conditions of his previously imposed probation.

In consideration of respondent's violation of probation conditions and his lack of participation in these proceedings, the court does not believe it worthwhile to recommend again placing him on probation subject to conditions.

The prior disciplinary order "provided [respondent] an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in [the matter] presently under consideration sadly indicates either his unwillingness or inability to do so." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.)

Hence, the court finds good cause to recommend, among other things, that respondent's probation be revoked, that the previously stayed, one-year suspension be lifted, and that the entire period of his stayed suspension be imposed.

Recommendations

The court recommends that the probation of respondent Henry Alan Pattiz, member No. 44073, imposed in Supreme Court case matter S190160 (State Bar Court case No. 07-O-14357) be revoked; that the previous stay of execution of the suspension be lifted; and that respondent be actually suspended from the practice of law for one year.

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 S190160.

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.⁴

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.

⁴ 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.)

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.

Accordingly, respondent is **ORDERED** to be involuntarily enrolled inactive under section 6007, subdivision (d)(1). This inactive enrollment order will be effective three calendar days after the date upon which this order is served.⁵

Dated: May _____, 2012

RICHARD A. HONN
Judge of the State Bar Court

⁵ The 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).)