

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 12-PM-12944-PEM (S194823)
)	
PAUL ERNEST VALLONE,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 168395,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction¹

In this probation revocation proceeding, respondent **Paul Ernest Vallone** 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, two-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.

suspension be lifted, and that he be actually suspended for two years and until he provides 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).)

Significant Procedural History

On April 16, 2012, the Office of Probation filed and properly served a motion to revoke probation on respondent. Respondent filed a response on May 8, 2012, and requested a hearing.

But respondent failed to appear at the June 13, 2012 hearing.² The court took this matter under submission on June 13, 2012.

Findings of Fact and Conclusions of Law

Jurisdiction

Respondent was admitted to the practice of law in California on December 14, 1993, and has been a member of the State Bar at all times since.

Probation Violations

On September 20, 2011, in Supreme Court case No. S194823, the California Supreme Court ordered, among other things, that:

1. Respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for three years, including a 30 days' actual suspension, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed May 11, 2011 (State Bar Court case Nos. 09-O-16809, 10-C-07588, 10-C-10971 and 11-C-10122); and
2. Respondent comply, among other things, with the following probation conditions:

² Respondent had an obligation to appear at trial either through counsel or in person. (Rules Proc. of State Bar, rules 5.317(B)(2) and 5.100.) Thus, his request to appear telephonically at the hearing was rejected.

- A. Respondent was to contact the Office of Probation within 30 days from the effective date of discipline – by November 19, 2011, and schedule a meeting with his assigned Probation Deputy to discuss the terms and conditions of his probation. Respondent did not contact the Office of Probation to schedule his meeting until December 1, 2011. The meeting took place on December 9, 2011.
- B. Respondent was to attend at least two meetings per month of Alcoholics Anonymous, Narcotics Anonymous, or any combination of the two programs (AA meetings). As a separate reporting requirement, respondent had to provide to the Office of Probation satisfactory proof of attendance during each month, on or before the 10th day of the following month. Respondent has not provided proof of attending AA meetings for the reports due by December 10, 2011, and January through April 2012 (for attendance of meetings during November and December 2011 and January through March 2012).
- C. Respondent was to select a licensed medical laboratory approved by the Office of Probation. Respondent was to furnish to the laboratory blood and/or urine samples as may be required to show that he abstained from alcohol and/or drugs. Respondent was to cause the laboratory to provide to the Office of Probation, at his expense, a screening report on or before the 10th day of each month, containing an analysis of his blood and/or urine obtained not more than 10 days previously. Respondent (a) has not provided a selected licensed medical laboratory for the Office of Probation's approval; and (b) has not caused a laboratory to provide screening reports due for December 10, 2011, and January through April 2012.

- D. Respondent was to maintain with the Office of Probation a current address and a current telephone number at which he could be reached because he was to return a call from the Office of Probation within 12 hours concerning additional, required lab testing. Respondent has not provided a current address and telephone number designated by him for such contact by the Office of Probation.
- E. Upon the request of the Office of Probation, respondent was to provide a medical waiver to the Office of Probation. On November 21, 2011, the Office of Probation mailed respondent a letter containing a request that he sign and return the enclosed Authorization to Obtain and Disclose Medical Information. Respondent has not provided a medical waiver to the Office of Probation as requested.
- F. Respondent was to comply with the State Bar Act and the Rules of Professional Conduct and to report such compliance to the Office of Probation under penalty of perjury by each January 10, April 10, July 10, and October 10 (quarterly reports). Respondent has not submitted his first two quarterly reports due by January 10 and April 10, 2012.
- G. Respondent was to comply with all conditions of probation imposed in his underlying criminal matter and so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation ("UCM reports"). Respondent has not submitted his first two UCM reports due by January 10 and April 10, 2012.

The Supreme Court order became effective on October 20, 2011, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.³

Respondent has not complied with the conditions of probation as set forth above.

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, as ordered by the Supreme Court in S194823: respondent has failed to (1) file his first two quarterly reports due January 10 and April 10, 2012; (2) provide a medical waiver; (3) maintain with the Office of Probation a current address and telephone number, designated by him for such contact by the Office of Probation; (4) select a licensed medical laboratory for screening to show that he has abstained from alcohol and/or drugs; (5) provide proof that he has attended two meetings per month of the AA meetings; (6) submit his first two UCM reports due by January 10 and April 10, 2012; and (7) timely contact the Office of Probation on or before November 19, 2011.

³Although 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.

As a result, the revocation of respondent's probation in California Supreme Court order No. S194823 is warranted.

Aggravation⁴

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

Respondent has one prior record of discipline.

In the underlying matter, respondent stipulated that he created and forged the name of a judge on a false order and attempted to file the false order and making false statements to the court at the order to show cause hearing, thereby sought to mislead the judge or judicial officer by artifice or false statement of fact and law in violation of Business and Professions Code section 6068, subdivision (d).

Furthermore, on February 4, 2004, and August 17, 2005, respondent entered pleas of no contest to violations of Vehicle Code section 23152(a). In addition, on August 17, 2005, respondent was convicted of violating Vehicle Code section 23152(a), with the admission of the prior conviction and enhancement of Vehicle Code section 23578. By violating Vehicle Code section 23152(a) on two separate occasions, respondent violated Business and Professions Code section 6068, subdivision (a). The facts and circumstances surrounding the Vehicle Code violations did not involve moral turpitude but did involve other misconduct warranting discipline.

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

Respondent committed multiple acts of wrongdoing, including failing to timely contact the Office of Probation, failing to file his quarterly reports, failing to provide a medical waiver, failing to maintain a current address and telephone number, failing to select a medical laboratory

⁴ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

for screening, failing to submit proof of attendance at the AA meetings, and failing to submit his underlying criminal matter 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 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.) Although the motion to revoke his probation was filed in April 2012, which put respondent on notice that his probation status was in jeopardy, respondent still failed to comply with his probation conditions.

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 participate in this proceeding, 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 court has no information about the underlying cause of his probation violations or of any mitigating circumstances surrounding his misconduct since he did not participate in this proceeding. Respondent was aware of the terms and conditions of his disciplinary probation, yet failed to comply with them despite reminders from the Office of Probation. Moreover, the misconduct in the present case and the misconduct in the preceding matter are related as evidenced by respondent's failure to address his substance abuse issues. This is his second disciplinary matter.

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

Recommendations

The court recommends that the probation of respondent **Paul Ernest Vallone**, member No. 168395, imposed in Supreme Court case matter S194823 (State Bar Court case Nos. 09-O-16809, 10-C-07588, 10-C-10971 and 11-C-10122) 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 two years and until he provides 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).)

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 previously ordered to do so in Supreme Court case No. S194823.

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.⁵

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).⁶ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: July _____, 2012

PAT McELROY
Judge of the State Bar Court

⁵ 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.)

⁶ 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).)