

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

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| In the Matter of |) | Case No.: 12-PM-13894-PEM (S184690) |
| |) | |
| THOMAS VICTOR DILLON, |) | ORDER GRANTING MOTION TO |
| |) | REVOKE PROBATION AND ORDER OF |
| Member No. 236380, |) | INVOLUNTARY INACTIVE |
| |) | ENROLLMENT |
| <u>A Member of the State Bar.</u> |) | |

Introduction¹

In this probation revocation proceeding, respondent Thomas Victor Dillon 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

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 one year and until he makes restitution. If he remains suspended for two years or more, respondent 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).)

Significant Procedural History

On May 24, 2012, the Office of Probation filed and properly served a motion to revoke probation on respondent. Respondent did not file a response.

The court took this matter under submission on June 20, 2012.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on May 25, 2005, and has been a member of the State Bar at all times since.

Probation Violations

On September 28, 2010, in Supreme Court case No. S184690, 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 June 8, 2010 (State Bar Court case Nos. 09-O-10226; 09-O-11170); 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);

- B. Within 90 days from the effective date of discipline (by April 10, 2011), respondent was to make restitution to Annette Penn, or the Client Security Fund if it has paid, in the amount of \$2,070 plus interest at the rate of 10% per year from January 1, 2009, in quarterly installments of no less than \$500 until paid in full and furnish satisfactory evidence of restitution to the Office of Probation with each quarterly report for the restitution made during that quarter; and
- C. Within one year from the effective date of discipline (by October 28, 2011), respondent was to provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School and passage of the test given at the end of that session.

The Supreme Court order became effective on October 28, 2010, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.

On November 22, 2010, respondent met with probation deputy Michael Kanterakis of the Office of Probation. All of respondent's conditions were reviewed at the meeting. Thereafter, they were in frequent communications regarding the probation conditions of restitution and quarterly reports with which respondent must comply.

Respondent filed his January 10, 2011 quarterly report on January 27; the April 10, 2011 report on April 20; and the July 10 report on July 11. Thus, he failed to timely file his first three quarterly reports. Thereafter, he failed to file the quarterly reports that were due October 10, 2011, January 10, 2012, and April 10, 2012.

After making one \$500 installment payment on June 20, 2011, respondent has not made any other quarterly restitution payments to Annette Penn or provided proof of such payments.

Finally, respondent has not provided proof of completion of any session of Ethics School.

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 probation conditions as ordered by the Supreme Court in S184690. He (1) failed to timely file his first three quarterly reports due January 10, April 10, and July 10, 2011; (2) failed to file the quarterly reports due October 10, 2011, January 10, 2012, and April 10, 2012; (3) failed to make and provide proof of quarterly installment payments of \$500 to Annette Penn (except for one payment); and (4) failed to provide proof of completion of any session of Ethics School.

As a result, the revocation of respondent's probation in California Supreme Court order No. S184690 is warranted.

Aggravation²

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

Respondent has one prior record of discipline.

In the underlying matter (S184690), which involved two clients, respondent stipulated that he failed to return client files; failed to perform services; failed to communicate with a client; improperly withdrew from employment; and failed to return unearned fees.

² All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

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

Respondent committed multiple acts of wrongdoing, including failing to timely file three quarterly reports, failing to file two quarterly reports, failing to make quarterly installment payments of restitution, and failing to provide proof of completion of Ethics School.

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 May 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.)

Based on the probation deputy's declaration, respondent telephoned probation deputy Kanterakis on May 15, 2012, and informed him of a health issue. But 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 repeated reminders from the Office of Probation.

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 Thomas Victor Dillon, member No. 168395, imposed in Supreme Court case matter S184690 (State Bar Court case Nos. 09-O-10226; 09-O-11170) be revoked; that the previous stay of execution of the suspension be lifted; that respondent be actually suspended from the practice of law for one year and until he makes restitution to Annette Penn in the amount of \$1,570³ plus interest at the rate of 10% per year from January 1, 2009, and furnish satisfactory evidence of restitution to the Office of Probation; and that if he remains suspended for two years or more, respondent 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).)

³ Since respondent has made an installment payment of \$500 in June 2011, he still owes Annette Penn \$1,570 plus interest (\$2,070 - \$500).

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. S184690.⁴

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.

⁴ On January 9, 2012, respondent has been suspended for his failure to take and pass the Multistate Professional Responsibility Exam.

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.)

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: August _____, 2012

PAT McELROY
Judge of the State Bar Court

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).)