

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 12-PM-14704-DFM
	)	
JAY CURTIS COX	)	ORDER GRANTING MOTION TO
	)	REVOKE PROBATION; DISCIPLINE
Member No. 147858	)	RECOMMENDATION; INVOLUNTARY
	)	INACTIVE ENROLLMENT ORDER.
<u>A Member of the State Bar.</u>	)	

INTRODUCTION

On June 22, 2012, the Office of Probation of the State Bar of California (Office of Probation) filed a motion to revoke the probation of respondent Jay Curtis Cox (Respondent). Although he was properly served with the motion to revoke probation by certified mail, return receipt requested, and by regular mail at his State Bar membership records address, Respondent did not participate in this proceeding. On July 19, 2012, this court issued an order submitting the motion for decision, serving Respondent with a copy of that order.

Good cause having been shown, the motion to revoke Respondent's probation is granted and discipline is recommended as set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

**Violation of Conditions of Probation**

On May 19, 2011, the California Supreme Court filed an order, S191335, accepting the State Bar Court's discipline recommendation in case no. 10-H-10200, in which Respondent stipulated to one count of failing to comply with conditions attached to a public reproof, in

willful violation of rule 1-110 of the Rules of Professional Conduct.<sup>1</sup> The discipline included one year's stayed suspension and two years' probation. This order was properly served on Respondent and became effective on June 18, 2011.<sup>2</sup> A copy of the stipulation and this court's order approving same had previously been properly served on Respondent on January 18, 2011.

On June 13, 2011, and April 6, 2012, the Office of Probation sent Respondent reminder letters regarding the probation conditions at his official address. Neither letter was returned as undeliverable or for any other reason. From July 2011 through January 2012, Respondent and his probation deputy had several conversations by telephone, regarding the terms and conditions of his disciplinary probation.

Despite these efforts to make Respondent aware of the conditions of his probation and to secure his compliance with them, Respondent did not comply with the following probation conditions:

(a) During the period of probation, Respondent was required to submit written quarterly reports 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 was in effect, stating under penalty of perjury that he had complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period. Respondent filed his January 10, 2012 quarterly report one day late and did not file his April 10, 2012 quarterly report.

(b) Respondent was ordered to abstain from the use of any alcoholic beverages and not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription. As a separate condition of probation,

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<sup>1</sup> The court judicially notices Respondent's prior disciplinary record.

<sup>2</sup> In the absence of evidence to the contrary, the court finds that the Clerk of the Supreme Court performed his or her duty by transmitting a copy of the Supreme Court's order to Respondent immediately after its filing. (Rule 8.532(a), Cal. Rules of Court; Evid. C. §664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

Respondent was ordered to select a licensed medical laboratory and furnish the laboratory blood and/or urine samples as may be required to show that he abstained from alcohol and/or drugs.

Respondent was ordered to provide the Office of Probation a screening report on or before the tenth day of each month, containing an analysis of Respondent's blood and/or urine obtained not more than ten days previously. Respondent did not comply with this condition as follows:

- i. Respondent's July 10, 2011 test was received but not filed because it did not test for EtG or Oxycodone, and the test was not observed;
- ii. Respondent's August 10, 2011 test was also received but not filed because it did not test for EtG or Oxycodone, and the test was not observed;
- iii. Respondent's September 10, 2011 test was filed three days late;
- iv. Respondent's October 10, 2011 test was filed seven days late;
- v. Respondent's December 10, 2011 test was filed one month late;
- vi. Respondent's January 10, 2012 test was filed six days late and came back positive for amphetamines and methamphetamines;
- vii. Respondent's March 10, 2012 test was filed four days late;
- viii. Respondent did not file his April 10, 2012 test;
- ix. Respondent's May 10, 2012 test was submitted twenty days late and the EtG test was not performed because "Donor Refused;" and
- x. Respondent did not file his June 10, 2012 test.

(c) During the period of probation, Respondent was to maintain a current telephone number with the Office of Probation at which he could be reached. Respondent was ordered to return any call from the Office of Probation concerning testing of his blood or urine within twelve hours. On December 13, 2011, Respondent's probation deputy tried to call him regarding his laboratory testing results, but was informed that Respondent was on a Caribbean cruise and unreachable. Over the next few days, the probation officer called and emailed Respondent, but

was not able to speak with him. On December 17, 2011, Respondent called his probation officer and informed her that he was out of cellular range from December 9 through December 16, 2011.

(d) Respondent was ordered to attend at least three meetings of Alcoholics Anonymous per month and to provide the Office of Probation with satisfactory proof of attendance during each month, on or before the tenth day of the following month. Respondent failed to comply with this condition as follows:

- i. Respondent's August 10, 2011 proof of attendance was filed six days late;
- ii. Respondent's November 10, 2011 proof of attendance was filed four days late;
- iii. Respondent's January 10, 2012 proof of attendance was filed one day late;
- iv. Respondent's March 10, 2012 proof of attendance was not filed;
- v. Respondent's April 10, 2012 proof of attendance was not filed;
- vi. Respondent's May 10, 2012 proof of attendance was not filed; and
- vii. Respondent's June 10, 2012 proof of attendance was not filed.

### **Aggravating Circumstances**

#### **Prior Discipline**

Respondent's prior record of discipline is a factor in aggravation. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>3</sup> std. 1.2(b)(i).) Respondent has three prior impositions of discipline.

On May 15, 2001, the Supreme Court filed an order in case no. S095787 (State Bar Court case nos. 00-C-10170; 00-C-12669; 00-C-12875 (Cons.)) suspending Respondent from the practice of law for two years, stayed, with a three-year period of probation, including a one-year actual suspension. This matter related to four criminal convictions Respondent received for

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<sup>3</sup> Future references to standard or std. are to this source.

possession of methamphetamine (on two separate occasions), reckless driving related to alcohol, and driving with a suspended license. In this matter, Respondent stipulated that the four criminal convictions did not involve moral turpitude, but did involve other misconduct warranting discipline. In mitigation, Respondent had no prior record of discipline and demonstrated remorse. In aggravation, Respondent committed multiple acts of misconduct.

Effective January 28, 2010, Respondent was publicly reprovved with conditions in State Bar Court case no. 09-C-13668. This matter related to Respondent's conviction for driving under the influence of alcohol. In this proceeding, Respondent stipulated that his conviction did not involve moral turpitude, but did involve other misconduct warranting discipline. In mitigation, Respondent cooperated with the State Bar and demonstrated remorse. In aggravation, Respondent had a prior record of discipline.

In the underlying matter, the Supreme Court, on May 19, 2011, filed an order in case no. S191335 (State Bar Court case no. 10-H-10200) suspending Respondent from the practice of law for one year, stayed, with a two-year period of probation. This matter related to Respondent's failure to comply with the terms of his public reprovval. In mitigation, Respondent acknowledged his wrongdoing and cooperated with the State Bar. In aggravation, Respondent had a prior record of discipline and committed multiple acts of misconduct.

### **Multiple Acts of Misconduct**

Respondent's numerous violations of the terms of his disciplinary probation constitute multiple acts of misconduct. (Std. 1.2(b)(ii).)

### **Mitigating Circumstances**

It was Respondent's burden to establish mitigating factors. No mitigating factors were shown by the evidence presented to this court.

## **DISCUSSION**

The extent of the discipline to be recommended is dependent, in part, on the seriousness of the probation violation, the member's recognition of the misconduct, and the member's prior efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Having considered these factors and the Office of Probation's contentions, the court concludes that actual suspension for one year, as requested, is both required and sufficient to protect the public in this instance. Respondent was aware of the terms and conditions of his disciplinary probation, yet did not comply with them despite reminders from the Office of Probation. His failure to participate in this proceeding is also a matter of considerable concern to this court.

## **RECOMMENDED DISCIPLINE**

### **Actual Suspension**

The court recommends that the probation of respondent Jay Curtis Cox, previously ordered in Supreme Court case matter S191335 (State Bar Court case no. 10-H-10200), be revoked; that the previous stay of execution of the suspension be lifted; and that Respondent be suspended from the practice of law for one year.

### **Probation**

It is recommended that Respondent be placed on probation for two years, with the following conditions:

1. During the period of probation, Respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
2. Within 10 days of any change, Respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

3. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with his 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;
4. Respondent must submit written quarterly reports to the State Bar's Office of Probation (Office of Probation) on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, the report must be submitted on the next following quarter date, and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probationary period;

5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;
6. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription;
7. Respondent must attend at least three meetings per month of Alcoholic Anonymous. As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth day of the following month, during the probation period;
8. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at Respondent's expense, a screening report on or before the tenth day of each month of the probation period, containing an analysis of Respondent's blood and/or urine obtained not more than 10 days previously;
9. Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory

described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report;

10. Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of the Chief Trial Counsel, the Office of Probation, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition; and
11. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.<sup>4</sup>

### **Rule 9.20**

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>5</sup>

### **MPRE**

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination as he is already subject to an order to do so, issued by the Supreme Court in its order S191335.

### **Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

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<sup>4</sup> Ethics School is not recommended because it was not included in the underlying case, as Respondent completed it in December 2010.

<sup>5</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.)



## **ORDER REGARDING INACTIVE ENROLLMENT**

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).<sup>6</sup> This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: August \_\_\_\_\_, 2012

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DONALD F. MILES  
Judge of the State Bar Court

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<sup>6</sup>Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)