

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 13-PM-11368-LMA
)	
PATRICK ESMAEL SAFFARIAN,)	ORDER GRANTING MOTION TO REVOKE
)	PROBATION AND ORDER OF
Member No. 217520,)	INVOLUNTARY INACTIVE ENROLLMENT
)	(Bus. & Prof. Code, § 6007, subd. (d)(1))
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **PATRICK ESMAEL SAFFARIAN**¹ is charged with violating three of the conditions of probation imposed on him under the Supreme Court’s April 13, 2011, order in *In re Patrick Esmael Saffarian on Discipline*, case number S190158 (State Bar Court case number 05-O-02960-PEM, etc.) (*Saffarian I*). The State Bar's Office of Probation (OP) is represented by Supervising Attorney Terrie Goldade. Respondent did not appear.

As discussed *post*, the court finds, by a preponderance of the evidence (Bus. & Prof. Code, § 6093, subd. (c));² Rules Proc. of State Bar, rule 5.311), that respondent is culpable of the charged probation violations. Accordingly, the court will grant the motion to revoke probation

¹ Respondent was admitted to the practice of law in California on December 20, 2001, and has been a member of the State Bar of California since that time. He has one prior record of discipline.

² All further statutory references are to this code.

and recommend that respondent be actually suspended from the practice of law for one year and until he pays restitution in accordance with the conditions of probation imposed on him in *Saffarian I*. The court will also recommend that, if respondent remains actually suspended for two years or more as a result of his failure to pay restitution, respondent remain suspended until he 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).³ Finally, the court will order that respondent be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (d)(1).

II. Pertinent Procedural History

OP filed the present motion to revoke probation on March 14, 2013. OP properly served a copy of the motion on respondent at his latest address shown on the official membership records of the State Bar of California by certified mail, return receipt requested on March 13, 2013. (§ 6002.1, subd. (c); Rules Proc. of State Bar, rules 5.25, 5.314(A); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108 [service in a State Bar Court proceeding is deemed complete when mailed even if the attorney does not receive the pleading]; but see also *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

III. Findings of Fact and Conclusions of Law

A. Probation Violations

In its April 13, 2011, order in *Saffarian I*, the Supreme Court placed respondent on one year's stayed suspension and three years' probation with conditions, including seventy-five days' suspension.

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³ All further references to standards (or stds.) are to this source.

OP charges that respondent willfully violated his (1) quarterly-probation-reporting condition under which respondent is required to submit, to OP, on every January 10, April 10, July 10, and October 10, a written probation report stating whether he complied with the Rules of Professional Conduct of the State Bar, the State Bar Act (§ 6000, et seq.), and all the conditions of his probation during the preceding calendar quarter; (2) restitution condition under which respondent is required, inter alia, to make minimum monthly payments of \$100 to Alaine Van Ness and to provide satisfactory proof of those payments to OP with each of his quarterly probation reports; and (3) ethics-school condition under which respondent was required to provide OP with proof that he successfully completed the State Bar's Ethics School within one year after the effective date of the Supreme Court's April 13, 2011, order.

Bad faith is not a requirement for finding a probation violation; “instead, a ‘general purpose or willingness’ to commit an act or permit an omission is sufficient. [Citations.]” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

The record establishes that respondent willfully violated each of the foregoing three conditions as follows: First, respondent violated his quarterly-probation-reporting condition by filing his quarterly reports due October 10, 2011, and January 10, 2013, late. Second, respondent violated his restitution condition by failing to provide OP with proof that he has made the required \$100 minimum-monthly-restitution payments to Alaine Van Ness since the effective date of the Supreme Court's April 13, 2011. Third, respondent violated his ethics-school condition by failing to provide OP with proof that he successfully completed the State Bar's Ethics School within 30 days after the effective date of the Supreme Court's April 13, 2011, order.

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B. Aggravating & Mitigating Circumstances

As noted *ante*, respondent has one prior record of discipline—*Saffarian I*—which is an aggravating circumstance under standard 1.2(b)(i).

In *Saffarian I*, respondent stipulated to culpability on a total of twenty-two counts of misconduct in five separate client matters. Specifically, in four of the five client matters, respondent stipulated to failing to competently perform legal services (Rules Prof. Conduct, rule 3-110(A)), failing to inform clients of significant developments (§ 6068, subd. (m)), and failing to promptly refund unearned fees (Rules Prof. Conduct, rule 3-700(D)(2)). And, in three of the five client matters, respondent stipulated to failing to cooperate in the State Bar's disciplinary investigation (§ 6068, subd. (i)) . And, in two of the client matters, respondent stipulated to failing to respond to client inquires (§ 6068, subd. (m)), failing to obey court orders (§ 6103), and withdrawing from employment improperly (Rules Prof. Conduct, rule 3-700(A)(2)). And, in one of the client matters, respondent stipulated to failing to report judicial sanctions (§ 6068, subd. (o)(3)).

The aggravating circumstances in *Saffarian I* were multiple acts of misconduct (std. 1.2(b)(ii)) and significant harm to the civil courts and respondent's clients (std. 1.2(b)(iv)). The mitigating circumstances were candor and cooperation with the State Bar (std. 1.2(e)(v)) and participation in the State Bar Court's Alternative Discipline Program (std. 1.2(e)(iv)).

IV. Discussion

Public protection and attorney rehabilitation are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.) “[T]here has been a wide range of discipline imposed for probation violations from merely extending probation . . . to a revocation of the full amount of the stayed suspension and

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imposition of the amount as an actual suspension.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

In determining the appropriate level of discipline, the court is to consider, inter alia, the seriousness of the violations, respondent’s efforts to comply with his probation conditions, respondent’s recognition of his misconduct, and the total length of stayed suspension which can be imposed as actual suspension. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

Moreover, the court must consider 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.”

Ordinarily, attorney disciplinary probation is effective “only when the attorneys placed on probation are effectively monitored to ensure (1) that they do not again engage in misconduct and (2) that they are undertaking to conform their conduct to the ethical strictures of the profession. [Citations.]” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.) Consequently, “an attorney probationer's filing of quarterly probation reports is an important step towards the attorney's rehabilitation. [Citations.]” (*Ibid.*) In addition, an attorney’s filing of quarterly probation reports is an important means of protecting the public because it permits “the State Bar to monitor [the attorney's] compliance with the State Bar Act and Rules of Professional Conduct. [Citation.]” (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 705.) Accordingly, respondent failure to timely file his quarterly reports is a serious probation violation.

“Restitution is fundamental to the goal of rehabilitation.” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his or her misconduct in real, concrete terms. (*Id.* at p. 1093; *Brookman v. State Bar* (1988) 46 Cal.3d 1004, 1009, quoting *Kelly v. Robinson* (1986) 479 U.S. 36, 49, fn. 10.) Thus, respondent’s failure to provide proof that he has made the \$100 minimum-monthly-restitution payments to Alaine Van Ness is also a serious probation violation.

The Supreme Court’s disciplinary order in *Saffarian I* provided respondent with an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in the present proceeding and his failure to respond to OP’s motion to revoke probation strongly suggests that respondent is indifferent to his duty to obey Supreme Court disciplinary orders. An attorney’s failure to strictly comply with the conditions of his or her disciplinary probation “ ‘demonstrates a lapse of character and a disrespect for the legal system that directly relate to [the attorney’s] fitness to practice law and serve as an officer of the court. [Citation.]’ [Citation.]” (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.)

In short, the court concludes that respondent’s probation violations require the imposition of actual suspension. In that regard, the court finds *In the Matter of Howard, supra*, 2 Cal. State Bar Ct. Rptr. 445 instructive on the appropriate length of that actual suspension. In *Howard*, the attorney was placed on one year’s actual suspension because he failed to file two probation reports, failed to deliver a former client’s personal financial records to an accountant, and failed to otherwise establish that he had complied with a prior civil court order to turn over files and financial records to the former client. In addition, the attorney in *Howard* (like respondent) did not appear in the probation revocation proceeding.

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In short, the court concludes that the appropriate level of discipline to recommend in the present proceeding is one year's actual suspension continuing until respondent pays restitution in accordance with the conditions of probation imposed on him in *Saffarian I* and that, if respondent's actual suspension continues for two years or more, he establishes his rehabilitation, fitness to practice and learning in the law in accordance with standard 1.4(c)(ii).

Respondent took and passed the March 2012 Multistate Professional Responsibility Examination. Therefore, the court does not recommend that respondent be ordered to take and pass that examination again. (Cf. Rules Proc. of State Bar, rule 5.135.)

V. Recommended Discipline

The court recommends that the probation imposed on respondent **PATRICK ESMAEL SAFFARIAN** in the Supreme Court's April 13, 2011, order in case number S190158 (State Bar Court case number 05-O-02960, etc.) be revoked; that the stay of execution of the one-year suspension previously imposed in that order be lifted; and that Saffarian be actually suspended from the practice of law in the State of California for one year and until he makes restitution in accordance with the conditions of probation imposed on him under the Supreme Court's April 13, 2011, order in case number S190158. The court further recommends that, if Saffarian remains suspended for two years or more as a result of not paying restitution, Saffarian be required to establish, in the State Bar Court, his rehabilitation, fitness to practice, and learning and ability in the general law before his actual suspension is terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).) The court further recommends that Saffarian be credit given, towards the period of his actual suspension, for the period of his involuntary inactive enrollment under this court's order of inactive enrollment, *post*. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

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VI. Rule 9.20 & Costs

The court further recommends that **PATRICK ESMAEL SAFFARIAN** 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 matter.

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. Order of Involuntary Inactive Enrollment

The requirements set forth in Business and Professions Code section 6007, subdivision (d)(1) having been met, the court orders that **PATRICK ESMAEL SAFFARIAN** 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 (Rules Proc. of State Bar, rule 5.315). (See also Bus. & Prof. Code, § 6007, subd. (d)(2); Rules Proc. of State Bar, rule 5.315.)

Dated: May ___, 2013.

LUCY ARMENDARIZ
Judge of the State Bar Court