

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case No.: **13-PM-11430-RAH**  
)  
**DEBRA ROBERTS TORRES-REYES** ) **DECISION**  
)  
**Member No. 146724** )  
)  
A Member of the State Bar. )

**INTRODUCTION**

The Office of Probation (OP), represented by Terrie Goldade, filed a motion pursuant to Business and Professions Code sections 6093, subdivision (b) and 6093, subdivision (c)<sup>1</sup> and rules 560 et seq. of the Rules Proc. of State Bar<sup>2</sup> to revoke the probation of respondent Debra Roberts Torres-Reyes. Respondent, representing herself, filed a response thereto.

For the reasons stated below, the court finds by a preponderance of the evidence that respondent willfully failed to comply with the terms of her probation. (Section 6093, subd. (c).) As a result, the court grants OP's motion to revoke her probation and its request to involuntarily enroll her as an inactive member of the State Bar pursuant to section 6007, subdivision (d). The court recommends that respondent's probation be revoked, that the previously-ordered stay be

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<sup>1</sup>Future references to section are to this source.

<sup>2</sup>Future references to rule are to this source.

lifted and that she be actually suspended from the practice of law for six months and until she makes specified restitution.

## **FINDINGS OF FACT**

### **Jurisdiction**

Respondent was admitted to the practice of law in California on June 11, 1990, and has been a member of the State Bar at all times since.

### **Probation Violations**

On December 27, 2011, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case nos. 10-O-07578 (11-O-11629; 11-O-13524) recommending discipline consisting of two years' stayed suspension and three years' probation, among other things. A copy of the stipulation and the State Bar Court's order approving same were properly served upon respondent on that same date at her State Bar membership records address by first-class mail, postage prepaid.

On May 22, 2012, the California Supreme Court filed an order, S200005, accepting the State Bar Court's discipline recommendation and ordering respondent to comply with the conditions of probation recommended, including the following, with which respondent did not comply:

(a) During the period of probation, submitting a written report to the OP 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 she has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report). Respondent has not submitted the quarterly report due on the 10<sup>th</sup> of October 2012.<sup>3</sup> The report due on January 10, 2013 was filed untimely the next day; and

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<sup>3</sup> A report postmarked October 10, 2012 and received on October 16, 2012 was untimely and could not be filed because it did not bear a date on which the report was signed under penalty of perjury. Respondent wrote in this report that she had not made any restitution payments because she could not find work.

A second attempt at filing this report was received on November 1, 2012, but could not be filed because it was backdated to October 9, 2012.

(b) Respondent was ordered to pay restitution to the following payees or to the Client Security Fund, if it has paid:

- (1) Jose and Isela Licea, \$8,987.67 plus 10% interest from December 12, 2009;
  - (2) Franklin and Deborah Huddy, \$2,650 plus 10% interest from February 23, 2010;
  - (3) Brian and Cynthia Thompson, \$4,872.55, plus 10% interest from February 18, 2010;
- and
- (4) Jeanne Mosley, \$3,289 plus 10% interest from May 20, 2010.

Restitution was to be made in \$500 quarterly payments to each payee commencing in September 2012, three months after the effective date of the Supreme Court's disciplinary order. The remaining balance was due and payable immediately if any payment was missed. Respondent was also ordered to provide satisfactory proof of payment to the Office of Probation with each quarterly report.

Respondent has not complied with this probation condition because she has not made any installment or accelerated payments as ordered.<sup>4</sup>

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A third attempt at filing this report was received on January 7, 2013 but could not be filed because a box remained unchecked regarding her compliance with various requirements. She wrote in the space provided that she was unable to make quarterly installment restitution payments because she was indigent and unemployed.

A fourth attempt at filing this report was received on January 16, 2013, but could not be filed because it was a photocopy, not an original.

<sup>4</sup> Respondent has been unemployed for a long time and presently received unemployment and veteran's benefits. She is married and her husband has some income. It also appears that respondent has been in treatment with the since September 2009 for panic disorder which has caused significant limitations in her daily occupational functioning regarding driving and increased anxiety in work environments, according to an April 18, 2013, letter from the Department of Veterans Affairs. These issues may be considered if appropriately raised in a motion to modify probation. The court notes that respondent unsuccessfully attempted to file a motion for relief from restitution and disciplinary costs but it was rejected by the court clerk in January 2013 because of a deficiency in the proof of service and that a motion has not been filed since.

The Supreme Court order became effective on June 21, 2012, thirty days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent.<sup>5</sup>

On July 13, 2012, the OP wrote a letter to respondent, properly sent to her at her then-official State Bar membership records address, reminding her of certain terms and conditions of her suspension and probation imposed pursuant to the Supreme Court's order and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, instruction sheets or forms to use in submitting quarterly reports, as well as scheduling and enrollment information for Ethics School.

On December 20, 2012, the OP sent respondent a letter to her official address regarding her noncompliance.

Neither correspondence was returned to the OP.

In the July 13 and December 20 letters and during a July 20, 2012, telephone conversation with the OP, respondent was advised that a motion to modify probation or extend time for compliance would be required.

Respondent did not comply with the conditions of probation as set forth above.

### **CONCLUSIONS OF LAW**

Pursuant to section 6093, subdivisions (b) and (c) and rule 561, the court concludes that OP has demonstrated by a preponderance of the evidence that respondent willfully violated the

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<sup>5</sup>Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. Moreover, 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 or her duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

conditions of probation regarding contacting and meeting with the OP and filing quarterly reports, as ordered by the Supreme Court in S172347, more fully set forth above.

### **AGGRAVATING CIRCUMSTANCES**

In aggravation, respondent has one prior record of discipline. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct<sup>6</sup>, std. 1.2(b)(i).) In S200005, respondent and the State Bar stipulated to culpability in one count of violating section 6106.3 in four client matters. Multiple acts of misconduct was the aggravating factor. No prior discipline, candor and cooperation, family problems and prior service in the military were the mitigating factors.

Respondent significantly harmed the administration of justice as her failure to comply with the conditions of her probation made it more much difficult for the State Bar to appropriately monitor her in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

### **MITIGATING CIRCUMSTANCES**

There is not clear and convincing evidence of mitigating factors.<sup>7</sup>

### **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. (Rule 562.) The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation

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<sup>6</sup> Future references to std. are to this source.

<sup>7</sup> For example, the letter from the Department of Veteran Affairs does not address a causal connection between the misconduct and respondent's mental health issues. Moreover, the mental health issues do not appear to be resolved.

violation and respondent's recognition of her misconduct and her efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

Respondent was aware of the terms and conditions of her disciplinary probation because she stipulated to them, yet she failed to comply with them. The prior disciplinary order "provided [respondent] an opportunity to reform her conduct to the ethical strictures of the profession. [Her] culpability in [the matter] presently under consideration sadly indicates either [her] unwillingness or inability to do so." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.)

Accordingly, after considering the misconduct and the aggravating and mitigating circumstances, the court recommends, among other things, six months' actual suspension as sufficient for the protection of the public in this instance during which time she will have the opportunity of demonstrating that she is desirous and able to meet these important ethical obligations in the timely and serious fashion expected of California attorneys.

### **DISCIPLINE RECOMMENDATION**

The court recommends that the probation of respondent DEBRA ROBERTS TORRES-REYES, previously ordered in Supreme Court case matter S200005 (10-O-07578 (11-O-11629; 11-O-13524), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation<sup>8</sup> for a period of three years subject to the following conditions:

1. Debra Roberts Torres-Reyes is suspended from the practice of law for a minimum of the first six months of probation, and she will remain suspended until the following requirements are satisfied:
  - a. She makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:

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<sup>8</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

- (1) Jose and Isela Licea in the amount of \$8,987.67 plus 10 percent interest per year from December 12, 2009;
  - (2) Franklin and Deborah Huddy in the amount of \$2,650 plus 10 percent interest per year from February 23, 2010;
  - (3) Brian and Cynthia Thompson in the amount of \$4,872.55 plus 10 percent interest per year from February 23, 2010; and
  - (4) Jeanne Mosley in the amount of \$3,289 plus 10 percent interest per year from May 20, 2010.
- b. If she remains suspended for two years or more as a result of not satisfying the preceding condition, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before her suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
  3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
  4. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's 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.
  5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
7. It is not recommended that respondent attend Ethics School, as respondent attended and completed that course within the last two years.

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

### **California Rules of Court, 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>9</sup>

### **Multistate Professional Responsibility Examination**

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because she was ordered to do so in Supreme Court matter S200005 (10-O-07578 (11-O-11629; 11-O-13524).

### **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.

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<sup>9</sup>Respondent is required to file a rule 9.20(c) affidavit even if she has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)



**ORDER REGARDING INACTIVE ENROLLMENT**

Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that respondent be actually suspended due to said violations.

**IT IS THEREFORE ORDERED** that respondent DEBRA ROBERTS TORRES-REYES, be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order.

**IT IS ALSO ORDERED** that her inactive enrollment be terminated as provided by Business and Professions Code section 6007, subdivision (d)(2).

**IT IS RECOMMENDED** that respondent's actual suspension in this matter commence as of the date of her inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: July \_\_\_\_\_, 2013

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RICHARD A. HONN  
Judge of the State Bar Court