

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-PM-15389-RAP
)	
BYRON EDWIN CONGDON)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 123286)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

On September 16, 2013, the Office of Probation of the State Bar of California (Office of Probation) filed a motion to revoke the probation of respondent Byron Edwin Congdon. 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 October 16, 2013, 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

On June 28, 2012, the California Supreme Court filed an order, S200695, accepting the State Bar Court’s discipline recommendation in case nos. 10-O-11270 (11-O-18100), in which respondent stipulated – in two matters – to failing to promptly respond to reasonable client inquiries, failing to keep a client reasonably informed of significant developments, and engaging in the unauthorized practice of law. The discipline included a two-year stayed suspension and

two years' probation including a 90-day period of actual suspension. This order was properly served on respondent and became effective on July 28, 2012.¹ A copy of the stipulation and this court's order approving the same had previously been properly served on respondent on January 25, 2012.

On July 24, 2012, and July 29, 2013, 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.

On September 5, 2012, respondent and his probation deputy communicated by telephone regarding the terms and conditions of his disciplinary probation. On October 25, 2012, respondent called his probation deputy with questions about the termination of his actual suspension and the information reflected on the State Bar's website. This was the last telephone conversation respondent had with his probation officer.

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 did not file his quarterly report due July 10, 2013.

(b) Respondent was ordered to provide the Office of Probation satisfactory proof of attendance at Ethics School and passage of the test given at the end of that session within one

¹ 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.)

year of the effective date of his discipline – by July 28, 2013. Respondent, however, failed to provide the Office of Probation proof that he attended Ethics School and passed the test given at the end of that session.

Aggravation

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,² std. 1.2(b)(i).) Respondent has two prior impositions of discipline.

Effective November 7, 2006, respondent was publicly reprovved with conditions in State Bar Court case no. 05-O-03890.³ In this matter, respondent stipulated to failing to cooperate with a State Bar investigation. In mitigation, respondent had no prior record of discipline and was cooperative during the State Bar Court proceedings. No aggravating factors were involved.

In the underlying matter, the Supreme Court, on June 28, 2012, filed an order in case no. S200695 (State Bar Court case nos. 10-O-11270 (11-O-18100)) suspending respondent from the practice of law for two years, staying execution of the suspension, placing him on probation for two years, with a 90-day actual suspension. In this matter, respondent failed to respond to client inquiries, failed to keep his client informed of significant developments, and engaged in the unauthorized practice of law. In mitigation, respondent was candid and cooperated with the State Bar. In aggravation, respondent had a prior record of discipline and committed multiple acts of misconduct.

² Future references to standard or std. are to this source.

³ On October 9, 2013, the Office of Probation filed a motion requesting that the court take judicial notice of respondent's public reprovval. This motion is granted.

Multiple Acts of Misconduct

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

Mitigation

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 two years, 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

The court recommends that the probation of respondent Byron Edwin Congdon, previously ordered in Supreme Court case matter S200695 (State Bar Court case nos. 10-O-11270 (11-O-18100)), be revoked; that the previous stay of execution of the suspension be lifted; and that respondent be suspended from the practice of law for two years, and he will remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, std. 1.4(c)(ii).)

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.

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 S200695.

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.

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).⁴ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: October 24, 2013

RICHARD A. PLATEL
Judge of the State Bar Court

⁴ Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)