

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 13-PM-17128-PEM (S209770)
)	
OSCAR ARTURO RUIZ DeCHAVEZ ,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND FOR
Member No. 108605,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction¹

In this probation revocation proceeding, respondent Oscar Arturo Ruiz DeChavez, 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 suspension be lifted, and that he be actually suspended for 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.

Significant Procedural History

On November 19, 2013, the Office of Probation filed and properly served a motion to revoke probation on respondent. The motion was mailed to respondent's official membership records address. Respondent did not file a response within 20 days of the service of the motion.

The court took this matter under submission on December 16, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 3, 1983, and has been a member of the State Bar of California at all times since that date.

Facts

On June 6, 2013, in Supreme Court case No. S209770, 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, that he be placed on probation for one year, and that he be actually suspended from the practice of law for the first 30 days of his probation, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed February 20, 2013 (State Bar Court case No. 12-H-15739);
and
2. Respondent comply, among other things, with the following probation conditions:
 - A. Within 30 days from the effective date of discipline, i.e. by August 5, 2013, respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation;
and
 - B. During the period of probation, respondent must 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).

The Supreme Court order became effective on July 6, 2013, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.²

On June 20, 2013 and on September 26, 2013, the Office of Probation mailed a letter to respondent. Each letter was properly sent to respondent at his official address, reminding him of certain terms and conditions of his suspension and the 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, and instruction sheets or forms to use in submitting quarterly reports.

On June 20, 2013, the assigned probation deputy, Michael Kanterakis telephoned respondent and advised respondent that he had sent respondent a letter in State Bar Court case No. 12-H-15739. On or about August 5, 2013, respondent left a voice mail message for probation deputy Kanterakis stating that he should not be suspended. Probation deputy Kanterakis returned respondent's phone call. During the return call, the probation deputy and respondent scheduled a telephonic meeting at which to discuss the terms and conditions of respondent's probation. Respondent was to telephone deputy Kanterakis on August 7, 2013, at a specified time. On August 7, 2013, however, respondent did not call probation deputy

²Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, California Rules of Court, rule 8.532(a) requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. 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 duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

Kanterakis. Respondent did not participate in the meeting that had been scheduled. Nor did respondent reschedule the meeting with the Office of Probation for any other date or at any other time. As of the date on which the Office of Probation filed its motion to revoke probation, respondent still had not participated in the required meeting.

On Friday, October 18, 2013, respondent left a voice mail message for probation deputy Kanterakis, saying that he had sent the probation deputy a wrong report, but would take care of that error immediately and would call first thing the following Monday. As of the date of the filing of the Office of Probation's motion to revoke probation, respondent had not submitted to the Office of Probation a quarterly report in his probation matter.

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 conditions of probation, as ordered by the Supreme Court in S209770 in that: (1) respondent failed to meet with the assigned probation deputy to discuss the terms and conditions of his probation as required; and (2) respondent failed to file his quarterly report, which was due on October 10, 2013.

As a result, the revocation of respondent's probation in California Supreme Court order No. S209770 is warranted.

Aggravation³

Prior Record of Discipline (Std. 1.5(a).)

Respondent has two prior records of discipline.⁴

In respondent's first prior record of discipline, respondent stipulated to culpability in one matter for failing to cooperate in a disciplinary investigation and in a second matter for failing to competently perform legal services. The court imposed a private reproof with conditions.

(State Bar Court case Nos. 10-O-11314; 11-O-13943 (Cons.).)

In respondent's second prior disciplinary matter, effective July 6, 2013, the underlying matter, respondent stipulated to failing to comply with conditions attached to his private reproof by not timely contacting the Office of Probation within the required 30 days from the effective date of his discipline to schedule and meet with the probation deputy assigned to his matter and with failing to timely submit two quarterly reports. Respondent was ordered suspended for one year, stayed, placed on probation for one year, and actually suspended from the practice of law for 30 days. (Supreme Court case No. S209770; State Bar Court case No. 12-H-15739.)

Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)

Respondent committed multiple acts of wrongdoing, including failing to schedule and meet with the Office of Probation as required and failing to submit his quarterly report due by October 10, 2013.

Indifference Toward Rectification/Atonement (Std. 1.2(g).)

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

³ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁴The court takes judicial notice of the certified copies of respondent's prior records of discipline attached as Exhibit 2 to the Office of Probation's motion to revoke probation and attached as Exhibit 4 to the Office of Probation's Request for Judicial Notice.

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.) Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying with his probation conditions, despite numerous reminders from the Office of Probation.

Mitigation

Since respondent did not file a response to the probation revocation motion, no evidence in mitigation was presented and none is apparent from the record. (Std. 1.6.)

Discussion

Section 6093 authorizes the revocation of probation for a violation of a probation condition. 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, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) Any actual suspension, however, cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rules Proc. of State Bar, rule 5.312.)

In its motion to revoke probation, the Office of Probation requests that respondent's probation be revoked, that the previously stayed one-year suspension be lifted, and that respondent be actually suspended for one year. The court agrees with the Office of Probation. Respondent's failure to comply with his probation conditions demonstrates that he remains indifferent to his professional obligations. Under such circumstances, the court concludes that his original probation should be revoked and the one-year suspension, previously stayed, should now be imposed. (*Potack v. State Bar* (1991) 54 Cal.3d 132; *Barnum v. State Bar* (1990) 52 Cal.3d 104, 107.)

Recommendations

The court recommends that the probation of respondent Oscar Arturo Ruiz DeChavez, member No. 108605, imposed in Supreme Court case No. S209770 (State Bar Court case No. 12-H-15739) be revoked; that the previous stay of execution of the suspension be lifted; and that respondent be actually suspended from the practice of law for one year.

Ethics School

The court also recommends that within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201.)

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. S209770 (State Bar Court case No. 12-H-15739).

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

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.)

Costs

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

Order Regarding Involuntary Inactive Enrollment and Further Recommendation

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 in the instant matter.

Therefore, it is hereby **ORDERED** that respondent Oscar Arturo Ruiz DeChavez, 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 respondent's inactive enrollment be terminated in the future as provided by Business and Professions Code section 6007, subdivision (d)(2).

Finally, it is **RECOMMENDED** that that any period of involuntary inactive enrollment under section 6007, subdivision (d), be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

Dated: January _____, 2014

PAT McELROY
Judge of the State Bar Court