

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-PM-17157-RAP
)	
RENE CHAVEZ NUNEZ)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 226171)	INACTIVE ENROLLMENT
)	
A Member of the State Bar.)	

Introduction

On November 20, 2013, the Office of Probation of the State Bar of California (Office of Probation) filed a motion to revoke the probation of respondent Rene Chavez Nunez. 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 January 10, 2014, 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 July 16, 2012, the California Supreme Court filed an order, S201803, accepting the State Bar Court's discipline recommendation in case no. 11-O-15095, in which respondent stipulated to failing to perform legal services with competence and failing to refund unearned fees in a single client matter. The discipline included a one-year stayed suspension and three years' probation. This order was properly served on respondent and became effective on August

15, 2012.¹ In addition, a copy of the stipulation and this court's order approving the same had previously been properly served on respondent on March 1, 2012.

On August 21, 2012 and August 21, 2013, the Office of Probation sent respondent reminder letters regarding the probation conditions at his official address. These letters were not returned as undeliverable or for any other reason.

On September 14, 2012, respondent and his probation deputy communicated by telephone regarding the terms and conditions of his disciplinary probation. Following this meeting, respondent and his probation deputy communicated by email on several occasions between October 2012 and January 2013.

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) 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 year of the effective date of his discipline – by August 15, 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.

(b) No later than with his first quarterly report filed with the Office of Probation following the effective date of the Supreme Court order (by October 10, 2012), respondent was to pay restitution to Juan Carlos Frigerio (Frigerio) or the Client Security Fund in the amount of \$790, plus interest accruing from September 13, 2010. On October 10, 2012, respondent

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.)

provided the Office of Probation with satisfactory proof of payment of \$200 to Frigerio, but has not provided the Office of Probation with satisfactory proof of payment of the balance.

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. 1.5(a).) Respondent has one prior imposition of discipline.

In the underlying matter, the Supreme Court, on July 16, 2012, filed an order in case no. S201803 (State Bar Court case no. 11-O-15095) suspending respondent from the practice of law for one year, staying execution of the suspension, and placing him on probation for three years. In this matter, respondent failed to perform legal services with competence and failed to refund an unearned fee in a single client matter. In mitigation, respondent had no prior record of discipline and was candid and cooperated with the State Bar. No aggravating factors were involved.

Multiple Acts of Misconduct

Respondent's violations of the terms of his disciplinary probation constitute multiple acts of misconduct. (Std. 1.5(b).)

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

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

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 a minimum of one year and until payment of restitution, 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

Accordingly, the court recommends as follows:

1. That the probation of respondent **Rene Chavez Nunez** previously ordered in Supreme Court case no. S201803 (State Bar Court case no. 11-O-15095) be revoked;
2. That the previous stay of execution of the suspension be lifted; and
3. That respondent be actually suspended from the practice of law for a minimum of one year, and he will remain suspended until the following requirements are satisfied:
 - i. He makes restitution to Juan Carlos Frigerio in the amount of \$748³ plus 10% interest per annum from September 13, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Juan Carlos Frigerio, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation; and
 - ii. If respondent is actually suspended for two years or more, he must remain suspended until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.2(c)(1).

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)

³ This figure takes into account the \$200 payment respondent made on October 10, 2012. Out of the \$200, \$158 was applied to interest from September 13, 2010 to September 12, 2012. The remaining \$42 was applied to the principal.

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.

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination as he was previously ordered to do so in Supreme Court matter S201803.

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.

Order of Involuntary 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: January 27, 2014

RICHARD A. PLATEL
Judge of the State Bar Court

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