

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 15-PM-10116-LMA
	)	
<b>THOMAS WILLIAM SMITH</b>	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE PROBATION; DISCIPLINE</b>
<b>Member No. 93102</b>	)	<b>RECOMMENDATION; INVOLUNTARY</b>
	)	<b>INACTIVE ENROLLMENT ORDER</b>
<u>A Member of the State Bar.</u>	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Respondent Thomas William Smith did not participate in this proceeding 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.

On July 10, 2013, the California Supreme Court filed an order, S199224, accepting the State Bar Court’s discipline recommendation, including specified probation conditions, in case nos. 10-O-08957 (10-O-09681; 11-O-15881). It became effective on August 9, 2013 (Rule 9.18(a), California Rules of Court) and was properly served on respondent.<sup>1</sup> A copy of the stipulation and the State Bar Court’s order approving same had previously been properly served on respondent on February 21, 2013.

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<sup>1</sup>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.)

On July 23, 2013 and September 26, 2014, the Office of Probation sent respondent reminder letters regarding the probation conditions, among other things, at his official address. Neither letter was returned as undeliverable or for any other reason.

The court finds by a preponderance of the evidence pursuant to Business and Professions Code section 6093, subdivisions (b) and (c) and rule 5.311, Rules Proc. of State Bar,<sup>2</sup> that respondent did not comply with the following probation conditions:

(a) During the period of probation, submitting 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 all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report).

Respondent did not submit the quarterly report due on October 10, 2014 until October 16, 2014, and did not submit the ones due on July 10, 2014 and January 10, 2015. Moreover, the January 10, 2014 was inconsistent in that it stated that he was and was not in compliance with the State Bar Act and the Rules of Professional Responsibility. It was resubmitted and filed late on February 10, 2014;

(b) Successfully completing the State Bar's Ethics School by August 9, 2014 and submitting proof thereof to the Office of Probation. As of December 15, 2014, he had not attended Ethics School; and

(c) Sending Jeff Lasse a letter by September 8, 2013, notifying him of his right to request fee arbitration if he disputed that respondent earned the entire fee he was paid and abiding by any final arbitration award made in Lasse's favor. Respondent sent Lasse a letter as required on August 9, 2013 which ultimately resulted in a settlement of the matter without fee arbitration. On October 25, 2013, Lasse accepted respondent's offer of paying Lasse \$1,000 in

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<sup>2</sup> Future references to section and rule are to the Business and Professions Code and Rules of Professional Conduct, respectively.

monthly installments. In February 2014, respondent sent the Office of Probation a copy of a letter from Lasse confirming their settlement along with some copies of documents that were unsatisfactory proof of payment to Lasse. Respondent has not submitted a declaration from Lasse as promised regarding proof of payments to him. In a November 2014 telephone call with the Office of Probation, Lasse indicated that he had received some funds from respondent but could not recall the amount, date or number of payments because they had been so sporadic. Although there has not been a final arbitration award made in Lasse's favor, he and respondent agreed to a settlement of the dispute in lieu of arbitration and respondent has not honored that agreement.

### **AGGRAVATING AND MITIGATING FACTORS**

Respondent has one prior record of discipline which included, among other things, one year's stayed suspension and two years' probation subject to conditions. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>3</sup> std. 1.5(a).) In S199224, respondent and the State Bar stipulated to culpability in three client matters for violations of rules 3-110(A) (not performing competently - two counts), 3-700(D)(1) (not returning all client papers and property - one count) , as well as sections 6068, subdivisions (a)/6125/6126 (unauthorized practice of law.) Aggravating factors included multiple acts of misconduct and harm to a client and to the administration of justice. Mitigating factors included no prior discipline, candor and cooperation and extreme emotional and physical difficulties.<sup>4</sup>

Respondent engaged in multiple acts of misconduct. (Std. 1.5(b).)

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<sup>3</sup> Future references to standard or std. are to this source.

<sup>4</sup> The court judicially notices the prior disciplinary record.

Respondent significantly harmed the administration of justice as his noncompliance with the probation conditions made it more difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts. (Std. 1.5(f).)

Further, he demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying despite reminders from the Office of Probation. (Std. 1.5(g).)

It is respondent's burden to establish mitigating factors, but, since he did not participate in this proceeding, none is found.

### **DISCUSSION**

The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of the misconduct and the 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 believes that actual suspension for one year and until respondent makes restitution and successfully completes Ethics School is 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 Office of Probation. Accordingly, the motion to revoke probation is GRANTED.

### **DISCIPLINE RECOMMENDATION**

The court recommends that the probation of respondent Thomas William Smith, previously ordered in Supreme Court case matter S199224 (State Bar Court case nos.

10-O-08957 (10-O-09681; 11-O-15881), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent is suspended from the practice of law for a minimum of one year, and that he will remain suspended until the following requirements are satisfied:<sup>5</sup>

- i. He makes restitution to Jeffrey Lasse in the amount of \$1,000 plus 10 percent interest per year from October 25, 2013 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Jeffrey Lasse, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
- ii. He submits 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 that session. 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.)
- iii. If he remains suspended for two years or more as a result of not satisfying the preceding conditions, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(i).)

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>6</sup>

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination and submit proof thereof to the Office of Probation as he was ordered to do so in Supreme Court order S199224 (State Bar Court case nos. 10-O-08957 (10-O-09681; 11-O-15881).

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<sup>5</sup> This level of discipline is consistent with rule 5.312, Rules Proc. of State Bar.

<sup>6</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

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

Dated: February \_\_\_\_\_, 2015

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LUCY M. ARMENDARIZ  
Judge of the State Bar Court