

PUBLIC MATTER

FILED
SEP 17 2015 P.B.

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 15-PM-13017-WKM
)	
JOSEPH WALCH,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 56192,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction

In this probation revocation proceeding, respondent Joseph Walch (Respondent) has been on probation with the State Bar Court for over fourteen years. During that span, Respondent's probation has been modified on five separate occasions, repeatedly extending the time for him to pay court-ordered restitution. Despite all of these extensions, Respondent still owes restitution to two of the original five restitution recipients (both of whom are now deceased) and over \$50,000 to the Client Security Fund (CSF).

Respondent is currently charged with violating probation conditions relating to his monthly restitution payments. The Office of Probation of the State Bar of California (Office of Probation) seeks to: (1) revoke Respondent's probation; (2) impose upon Respondent the entire five-year period of suspension previously stayed and until he makes restitution and complies with the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for



Professional Misconduct, standard 1.2(c)(1);¹ (3) require Respondent to comply with California Rules of Court, rule 9.20; and (4) involuntarily enroll Respondent as an inactive member of the State Bar.

The court finds, by preponderance of the evidence, that Respondent has violated certain probation conditions and hereby grants, in part, the Office of Probation's motion. The court recommends, among other things, that Respondent's probation in Supreme Court matter S097699 (State Bar Court case Nos. 96-O-02896, et al.) be revoked; that the previously ordered stay of execution of suspension be lifted; that Respondent be suspended from the practice of law for five years; that execution of the suspension be stayed, and that he be placed on probation for five years subject to the condition that he be actually suspended for two years and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to Std. 1.2(c)(i). Further, the court orders that Respondent be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (d)(1).

Significant Procedural History

On June 22, 2015, the Office of Probation, represented by Supervising Attorney Terrie Goldade, filed and properly served a motion to revoke Respondent's probation by certified mail and regular mail at Respondent's membership records address. The motion alleges that Respondent: (1) failed to pay the full \$150 restitution payment owed for December 1, 2014; (2) failed to pay the full \$150 restitution payment owed for January 1, 2015; (3) failed to pay any of the \$150 restitution payment owed for February 1, 2015; and (4) failed to provide proof of the \$150 restitution payment owed for March 1, 2015.

¹ All further references to standard(s) or std. are to this source.

Respondent, represented by Kenneth Kocourek, Esq., filed a response on July 24, 2015, in which Respondent requested a hearing on the motion. The hearing took place on August 18 – 19, 2015, at which time the matter was submitted for decision.

Findings of Fact and Conclusions of Law

Facts

Respondent was admitted to the practice of law in California on June 29, 1973. He has been a member of the State Bar at all times since.

On June 26, 2001, in Supreme Court case No. S097699, the California Supreme Court ordered, among other things, that:

1. Respondent be suspended from the practice of law for five years, that execution of the suspension be stayed, and that he be placed on probation for five years subject to certain conditions, including eighteen months' suspension and until he complied with former standard 1.4(c)(ii).
2. Respondent comply, along with other requirements, with the following probation conditions:
 - a. Payment of restitution to Bruce Masters² (or CSF, if appropriate)³ in the amount of \$5,142, plus 10% interest per annum accruing from July 31, 1995;
 - b. Payment of restitution to Rene Gonzalez (or CSF, if appropriate) in the amount of \$4,367.25, plus 10% interest per annum accruing from August 31, 1995;
 - c. Payment of restitution to Babe Wagner (or CSF, if appropriate) in the amount of \$13,333.33, plus 10% interest per annum accruing from March 29, 1996;

² The court notes that, even though this stipulation required that Respondent pay Bruce Masters restitution, the stipulation also stated that Bruce Masters died in December 1996. However, neither the Probation Deputy assigned to Respondent's case, Ms. Ivy Cheung, nor Respondent realized this fact until after the Motion to Revoke Probation was filed.

³ In the underlying stipulation, Respondent waived any objection to CSF paying the principal amount of the restitution set forth in the stipulation. CSF made these principal payments on or about June 4, 2001. Consequently, Respondent owed CSF the principal payments and only needed to pay each restitution recipient the interest that accrued up until the CSF principal payment. For instance in the case of Mr. Masters, Respondent owed him interest on \$5,142 accruing from July 31, 1995 to June 4, 2001.

- d. Payment of restitution to Lupe Contreras (or CSF, if appropriate) in the amount of \$3,725, plus 10% interest per annum accruing from September 28, 1994;
- e. Payment of restitution to Leonora Parra Garcia⁴ (or CSF, if appropriate) in the amount of \$570, plus 10% interest per annum accruing from June 30, 1996; and
- f. All restitution payments set forth be paid by a single monthly payment of at least \$50 per month, with such amount payable to the CSF, and the entire amount of restitution, including interest, to be paid no later than four years after the effective date of the order.

Respondent waived any objection to CSF paying the principal amount of the above-listed restitution. Thereafter, CSF made principal payments to all of the restitution recipients on or about June 4, 2001. As a result, Respondent owed CSF the principal payments and only needed to pay each restitution recipient the interest that accrued up until CSF issued the principal payments. For instance, in the case of Mr. Masters, Respondent owed money to both CSF and Mr. Masters. Respondent owed CSF the principal amount of \$5,142 plus interest accruing from June 4, 2001, and he owed Mr. Masters interest on \$5,142 accruing from July 31, 1995 to June 4, 2001.

The Supreme Court order became effective on August 25, 2001, thirty days after it was entered. (Cal. Rules of Court, rule 9.18(a).) The order was properly served on Respondent.

On December 22, 2005, the State Bar Court approved a stipulation to extend Respondent's probation until August 25, 2010, and also to extend Respondent's time to make restitution until July 2010.

On July 29, 2010, Respondent filed a motion seeking to be relieved of his obligation of paying restitution because of financial hardship, or, in the alternative, to extend his time to pay restitution. The Office of Probation opposed Respondent's motion to terminate his restitution obligations, but did not oppose his motion to extend time to pay restitution. On August 27, 2010,

⁴ Leonora Parra Garcia is also known as Leonora Parra.

the State Bar Court again extended Respondent's time to pay restitution until July 31, 2012. At the request of the Office of Probation, the terms of restitution were amended, so that Respondent was to pay Ms. Wagner \$200 first, representing the unpaid principal owed to her that had not been paid by the CSF, and then to pay, on a rotating basis, Ms. Wagner and the remaining former clients who were owed interest on the amounts that had been paid to them by CSF, after which Respondent was to reimburse CSF for the principal payments made by CSF to his former clients.

On November 5, 2010, Respondent filed a second motion seeking to modify his probation terms. The motion requested, in relevant part, that Respondent pay \$50 per month to Ms. Garcia, until fully paid; Mr. Gonzalez, until fully paid; and then to Ms. Contreras, if found (Respondent was unable to locate her at that time.); and then the remainder of payments to CSF. Attached to the motion was Respondent's declaration, in which he described his efforts in attempting to locate Ms. Contreras, Ms. Wagner, and Mr. Masters, using contact information provided by the Office of Probation in a letter written to Respondent on July 15, 2010. Also, Respondent stated that his letters addressed to Ms. Wagner and Mr. Masters were returned to him by the United States Post Office as "return to sender" and "not deliverable," but that Ms. Contreras's letter was not returned.

The Office of Probation filed a response to Respondent's motion on November 6, 2010. Attached to this motion was the declaration of Ms. Goldade. While critical of Respondent's limited attempts at locating Ms. Contreras, Ms. Wagner, and Mr. Masters, Ms. Goldade stated that the Office of Probation would not oppose Respondent fully paying Mr. Gonzalez first, and then the remainder of the payments to the CSF, if a good faith search was unable to find the three remaining former clients.

On December 8, 2010, the State Bar Court filed an order granting Respondent's motion to amend the terms of probation, and allowed him to pay Ms. Garcia first, then to alternate his

\$50 monthly payments between Mr. Gonzalez and Ms. Contreras. In the event Ms. Contreras was not found following Respondent's diligent attempts to locate her, Respondent was ordered to make monthly payments to Mr. Gonzalez and then to pay CSF on Ms. Contreras's behalf.

On July 26, 2012, Respondent filed another motion to modify the terms of his probation, by either having the State Bar Court relieve him of further restitution obligations due to financial hardship, or extending his time to pay restitution. In his declaration, Respondent described his additional attempts at finding both Ms. Wagner and Mr. Masters since 2010, which consisted of multiple internet searches and following up on information found with directory assistance in an attempt to call Ms. Wagner and Mr. Masters. His searches were unsuccessful.

The Office of Probation opposed the motion, claiming that Respondent had not demonstrated good faith efforts to locate either Ms. Wagner or Mr. Masters. Further, it argued that Respondent was unwilling to voluntarily pay more than the required \$50 per month, though Respondent spent \$300 per month on entertainment as stated in his financial declaration form filed in support of his motion.

On August 10, 2012, the State Bar Court granted Respondent's motion to extend his time to make complete restitution by July 31, 2014. However, the Court raised Respondent's minimum monthly payment for restitution to at least \$150 per month.⁵

On July 22, 2014, Respondent filed his fourth motion to modify the terms of his probation, seeking another extension of time to pay restitution. In this motion, Respondent described his additional attempts at finding both Ms. Wagner and Mr. Masters since 2012. Attached to the motion was his declaration, along with exhibits, showing his attempts at locating them. He found no new information on Mr. Masters, but did find information on the internet that Ms. Wagner was deceased. The Office of Probation opposed the motion, claiming that

⁵ On September 25, 2012, the State Bar Court filed a clarification of its order, related to terms not at issue in this proceeding.

Respondent's recent attempts had still not demonstrated good faith efforts in locating Ms. Wagner's heirs or Mr. Masters.

On August 22, 2014, the State Bar Court granted Respondent's motion to extend his time to complete restitution on or by September 1, 2016. The court noted that this would be the "last extension or modification" granted to Respondent.

Ms. Cheung and Respondent had a telephone conversation on November 26, 2014. On November 28, 2014, Respondent sent a letter to Ms. Cheung, purportedly confirming their conversation. In this letter, Respondent stated that he should be paying Ms. Contreras \$141.16 in December 2014, and Mr. Gonzales \$17.45 in January 2015.

On December 5, 2014, Ms. Cheung sent Respondent a letter expressing her dismay regarding Respondent's interpretation of their November 26, 2014 conversation. In this letter, Ms. Cheung clearly stated that Respondent was obligated to make at least \$150 minimum monthly payments to the payees. Ms. Cheung confirmed that Ms. Contreras was owed only \$141.16 and Mr. Gonzalez was only owed \$17.45. She suggested that Respondent complete his payments to Ms. Contreras and Mr. Gonzalez in December 2014, as they were owed a total of \$158.61. Ms. Cheung also advised Respondent to begin making restitution payments to Ms. Wagner and Mr. Masters beginning in 2015. Ms. Cheung told Respondent that he would violate the court's order if he paid CSF before paying Ms. Wagner and Mr. Masters; however, she explained that if, after a good faith search, Respondent could not find Mr. Masters or Ms. Wagner's heirs, he could petition the State Bar Court to modify the terms of his probation.⁶

Regarding Respondent's restitution obligation owed on December 1, 2014, Respondent paid Ms. Contreras \$150, despite only owing her \$141.16; thus, Respondent overpaid Ms. Contreras by \$8.84. Pursuant to Respondent's probation terms in effect on December 1,

⁶ Ms. Cheung made this same suggestion in a letter sent to Respondent on June 18, 2014.

2014, such amount should have been paid to Mr. Gonzalez. And by intentionally over-paying Ms. Contreras, Respondent only effectively paid \$141.16 toward his restitution in December 2014.

On December 15, 2014, Ms. Cheung sent Respondent a letter informing him that he was not in compliance with his probation terms as he failed to correctly pay \$150 in restitution in accordance with his probation terms. On December 21, 2014, Respondent sent Ms. Cheung a letter in response stating that he made two payments for the month of December to Ms. Contreras in the amounts of \$141.16 and \$8.84. Respondent concluded that, “[s]ince the two payments add up to \$150.00, [he was] in compliance for the month of December 2014.”

On December 29, 2014, Ms. Cheung sent a letter in reply to Respondent’s December 21, 2014 letter. Ms. Cheung again told Respondent that he was not in compliance for the month of December 2014 because he only paid \$141.16 in owed restitution. Ms. Cheung requested that Respondent correct the problem by sending an \$8.84 payment to Mr. Gonzalez.

On December 31, 2014, Respondent sent a reply letter to the Office of Probation stating that he was going to “stand by” his confirming letter of November 28, 2014. Respondent claimed that Ms. Cheung told him that he could make \$150 payments to “anyone” of his payees as long as he made the court-ordered \$150 payment.⁷ Respondent went on to state that he did not want to file a motion to amend his probation terms until he obtained Ms. Wagner’s death certificate and researched two new potential addresses for Mr. Masters.

Respondent obtained the services of a private investigator in early January 2015 to confirm the death of Ms. Wagner and the location of Mr. Masters.⁸ The private investigator

⁷ The court notes that this statement is not credible, and is clearly contradicted in Ms. Cheung’s written correspondence. Further, paying extra money to payees while CSF and other payees have yet to be reimbursed is impractical and nonsensical.

⁸ Respondent testified at the probation revocation hearing that the private investigator was also retained to search for the whereabouts of Ms. Leah Cruz, who was identified as

indicated that he could not locate Mr. Masters. He confirmed that Ms. Wagner was deceased, and reported that she passed away on January 14, 2004; additionally, he could not locate an estate in her name.

Regarding Respondent's restitution obligation owed on January 1, 2015, Respondent paid Mr. Gonzalez \$150, despite only owing him \$17.45. Thus, Respondent overpaid Mr. Gonzalez by \$132.55. Pursuant to Respondent's probation terms in effect on January 1, 2015, such amount should have been paid to Ms. Wagner or Mr. Masters, or, in the alternative, Respondent could have filed a motion requesting authorization to being making payments to CSF. By intentionally over-paying Mr. Gonzales, Respondent only effectively paid \$17.45 toward his restitution in January 2015.

On or about February 1, 2015, Respondent paid to Ms. Contreras an additional \$150, even though Respondent did not owe her any further restitution. Pursuant to Respondent's probation terms in effect on February 1, 2015, such amount should have been paid to Ms. Wagner or Mr. Masters. Respondent testified that he made this payment in an effort to comply with his probation terms as he did not have anyone else he could pay. By intentionally over-paying Ms. Contreras, Respondent effectively paid nothing toward his restitution in February 2015.

On February 23, 2015, Ms. Cheung sent Respondent another letter. In this letter, she advised Respondent that he was not in compliance with the restitution requirements of his probation in the months of December 2014, January 2015, and February 2015. Ms. Cheung

Ms. Wagner's daughter on her January 16, 2004 death certificate (obtained by Respondent and issued on December 11, 2014). The death certificate was submitted as an exhibit supporting Respondent's final motion to modify his probation terms (further discussed, *infra*). However, the private investigator only stated in his report that he was hired to determine if there was an estate in Ms. Wagner's name. Based on this discrepancy and the fact that the private investigator did not testify in the present proceeding, the court does not find Respondent's testimony on this point to be credible.

again told Respondent that he should only be paying restitution to payees that he owes, and instructed him to make a late payment in the amount of \$291.39 to either Mr. Masters or Ms. Wagner.⁹ Once again, Ms. Cheung instructed Respondent that he could file a motion to modify the terms of his probation. She further told him that she would soon be preparing a noncompliance referral, which could result in additional discipline and costs.

Following his receipt of Ms. Cheung's February 23, 2015 letter, Respondent did not make a March 2015 restitution payment, nor did he seek authorization to begin making payments to CSF, rather than Ms. Wagner or Mr. Masters. Instead, on or about March 7, 2015, Respondent filed a motion requesting relief from any restitution obligations to Ms. Wagner or Mr. Masters. In this motion, Respondent attached a declaration which referred to the private investigator he obtained in January 2015, and he also attached the private investigator's reports detailing the results.

The Office of Probation opposed Respondent's motion. Specifically, it opposed terminating his restitution obligations to Ms. Wagner or Mr. Masters. In her declaration, Ms. Goldade stated that Respondent had not demonstrated good faith efforts in finding Ms. Wagner's heirs or in locating Mr. Masters. As evidence of this lack of good faith, she stated that the Office of Probation located, through internet searches, someone living in Huntington Beach, California with a similar name to Ms. Wagner's daughter, and someone living in Vista, California with a similar name to Mr. Masters.

On April 9, 2015, the State Bar Court denied Respondent's motion on the grounds that Respondent did not demonstrate a good faith effort to locate Mr. Masters or Ms. Wagner's next of kin. Respondent has not filed any subsequent motions. Nor has he made or attempted to make any of his court-ordered payments since March 2015.

⁹ This late payment would be in addition to Respondent's March 2015 payment.

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. Finally, no distinction exists between “substantial” and “insubstantial,” or “technical,” probation violations. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536 - 537.)

By intentionally making overpayments in December 2014, and January and February 2015 to Ms. Contreras and Mr. Gonzalez, and no payment in March 2015, Respondent willingly committed acts that were in violation of his probation terms. Therefore, Respondent’s actions warrant the revocation of his probation in California Supreme Court order No. S097699.

Aggravation

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

Respondent has one prior record of discipline. In the underlying matter (case No. S097699), Respondent stipulated to culpability in twelve client matters stemming from his reckless or grossly negligent failure to supervise the operations of his law office resulting in, among other things, misrepresentation and numerous acts of misappropriation. Respondent was suspended from the practice of law for five years stayed, and placed on probation for five years subject to certain conditions, including eighteen months’ suspension and until he complied with former standard 1.4(c)(ii). Additionally, Respondent was ordered to make restitution in five client matters, as illustrated above.

Multiple Acts of Wrongdoing (Std. 1.5(b).)

Respondent committed multiple acts of wrongdoing by failing to timely pay full restitution according to his probation terms in December 2014, January 2015, February 2015, and March 2015.

Uncharged Violations (Std. 1.5(h).)

Since March 1, 2015, Respondent has continued to not make any restitution payments according to his probation terms. These uncharged probation violations warrant some consideration in aggravation.

Indifference Toward Rectification/Atonement (Std. 1.5(k).)

The Office of Probation argued that Respondent demonstrated indifference toward rectification or atonement for the consequences of his misconduct. The court disagrees. Prior to the present misconduct, Respondent had adequately complied with his probation conditions for over thirteen years. He has also been an active participant in his probation and in this proceeding. Accordingly, insufficient evidence of indifference exists.

Mitigation

Good Faith Belief (Std. 1.6(b).)

Respondent argued in mitigation that his actions show good faith. "In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held *and* reasonable. [Citation.]" (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653, italics added.) To conclude otherwise would reward an attorney for his unreasonable beliefs and "for his ignorance of his ethical responsibilities." (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. 420, 427.)

Here, even if Respondent honestly believed he was in compliance with his restitution requirements, his belief was not reasonable, considering his probation deputy was repeatedly reminding him that he was not in adequate compliance. Despite his probation deputy giving him

the opportunity to make late payments, Respondent failed to rectify the situation. Instead, Respondent stubbornly ignored the probation deputy's instructions, failed to bring a motion to pay CSF (rather than Mr. Masters and Ms. Wagner), and has not made any of the court-ordered restitution payments since March 2015. These actions do not demonstrate good faith.

Discussion

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.8(a) 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. (Rules Proc. of State Bar, rule 5.312.) The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation, the attorney'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. 525, 540.)

The court finds good cause for granting the Office of Probation's motion to revoke Respondent's probation. While the present probation violations are not the most serious, Respondent's recent practice of ignoring his probation deputy's instructions is troubling. This entire matter could have easily been avoided by simply following those instructions. Instead, Respondent adopted the nonsensical position that as long as he sent \$150 to one of his payees then he would be in compliance – even if that person was not owed any more money. When his probation deputy tried to correct him, Respondent told her that she was wrong and he could pay anyone of his payees.

After fourteen years of payments, Respondent still owes CSF over \$50,000.¹⁰ Despite repeated suggestions from the Office of Probation, Respondent never brought a motion requesting authorization to pay CSF before paying Mr. Masters and Ms. Wagner.¹¹ Had Respondent brought such a motion or made other efforts to make his monthly payments to CSF, this court would have been more inclined to make a finding of good faith. Instead, Respondent used his disagreement with the Office of Probation as a pretext to stop making his court-ordered payments altogether. The present case appears to be a situation where the tail was attempting to wag the dog. Respondent cannot choose to creatively interpret the conditions of his probation and unilaterally overrule reasonable instructions from the Office of Probation.

While discipline is warranted for Respondent's probation violations, the court does not believe that imposing the entire period of stayed suspension, as recommended by the Office of Probation, is necessary to achieve the goals of attorney disciplinary probation. That being said, there is little justification for deviation from the imposition of progressive discipline, as advocated by standard 1.8(a). Balancing all relevant facts and circumstances to reach the appropriate recommendation of degree of discipline, the court finds that a two-year actual suspension and until Respondent provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law, among other requirements, is sufficient to achieve the goals of attorney disciplinary probation.¹²

¹⁰ For many years, Respondent was only paying \$50 a month. Consequently, his payments were not even keeping up with interest.

¹¹ On March 9, 2015, Respondent filed a request to terminate his restitution payment obligations to Mr. Masters and Ms. Wagner. After this motion was denied on April 9, 2015, Respondent never filed a request to pay CSF while he attempted to locate Mr. Masters's and Ms. Wagner's heirs. The Office of Probation ultimately filed the present motion to revoke on June 22, 2015.

¹² This court is also recommending increased monthly restitution payments as a condition of probation, but declined to recommend that Respondent remain actually suspended until full

Recommendations

The State Bar Court recommends that the probation of respondent Joseph Walch, member No. 56192, imposed in Supreme Court case No. S097699 (State Bar Court case Nos. 96-O-02896, et al.) be revoked; that the previous stay of execution of the suspension be lifted; that Respondent be suspended from the practice of law for five years, that execution of such suspension be stayed; and that Respondent be placed on probation for five years on the following conditions:

1. Respondent will be suspended for a minimum of the first two years of probation and will remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(i).)

2. As a condition of probation, Respondent must also make restitution or reimbursement payments in the minimum amount of \$250¹³ per month to the following payees, and furnish proof to the State Bar's Office of Probation in Los Angeles:

(a) Client Security Fund to the extent of any payment from the fund to the original payees (Bruce Masters, Rene Gonzalez, Babe Wagner, Lupe Contreras, and Leonora Parra Garcia);¹⁴

(b) The legal heirs of Bruce Masters in the amount of \$3,007.72;¹⁵ and

(c) The legal heirs of Babe Wagner in the amount of \$7,440.35.¹⁶

payment of restitution due to the court's belief that such a recommendation would effectively disbar him.

¹³ Respondent was previously ordered to pay \$150 per month; however, he has not paid any restitution for the past seven months.

¹⁴ As of February 23, 2015, the amount due to CSF was approximately \$54,300.

¹⁵ Interest is not recommended as this restitution represents interest that accrued prior to the CSF payout.

¹⁶ Interest is not recommended as the vast majority of this restitution represents interest that accrued prior to the CSF payouts.

As Respondent has been unable to locate the heirs of Mr. Masters or Ms. Wagner, he is to begin reimbursing the Client Security Fund. Should the legal heirs of Mr. Masters or Ms. Wagner be located and verified by the Office of Probation, Respondent will pay the required restitution to the legal heirs prior making any additional payments to CSF.

Multistate Professional Responsibility Examination

The State Bar Court recommends that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) during the period of his suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.¹⁷

California Rules of Court, Rule 9.20

The State Bar Court further recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, 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.¹⁸

Costs

The State Bar Court recommends 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.

¹⁷ Respondent was required to take and pass the MPRE in the underlying matter; however, that order was filed more than fourteen years ago.

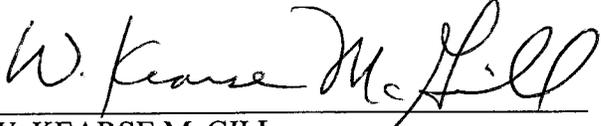
¹⁸ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Order of Involuntary Inactive Enrollment

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.

Respondent is ordered to be involuntarily enrolled inactive under section 6007, subdivision (d)(1).¹⁹ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: September 17, 2015



W. KEARSE MCGILL
Judge of the State Bar Court

¹⁹ The court recommends that any period of involuntary inactive enrollment be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 17, 2015, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION TO REVOKE PROBATION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

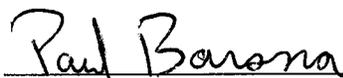
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**KENNETH CHARLES KOCOUREK
5785 BROCKTON AVE
RIVERSIDE, CA 92506**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Terrie Goldade, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 17, 2015.



Paul Barona
Case Administrator
State Bar Court