



PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

FILED
MAY 04 2016
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case No.: 16-PM-11828-DFM
)	
MARK BRYSON REPLOGLE,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 151200)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Introduction

On March 23, 2016, the Office of Probation of the State Bar of California (Office of Probation) filed a motion to revoke the probation of respondent Mark Bryson Replogle (Respondent). 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 April 26, 2016, 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 April 29, 2014, the California Supreme Court filed an order, S216723, accepting the State Bar Court's discipline recommendation in case nos. 13-O-11836, et al. This discipline included a one-year stayed suspension, a two-year probation, and conditions of probations including a minimum 30-day actual suspension continuing until Respondent makes restitution to two specified former clients. Other conditions of probation included an obligation to provide

quarterly reports to the Office of Probation during the period of probation and an obligation to take and present proof of passage of the State Bar's Ethics School within one year of the effective date of the Supreme Court's order. This order was properly served on Respondent and became effective on May 29, 2014.¹ In addition, a copy of the stipulation and this court's order approving the stipulation had previously been properly served on Respondent on December 19, 2013.

On May 13, 2014, the Office of Probation sent Respondent a reminder letter regarding the probation conditions at his official address. This letter was not returned as undeliverable or for any other reason.

On June 26, 2014, Respondent and his probation deputy communicated by telephone regarding the terms and conditions of Respondent's disciplinary probation. Between June 26, 2014 and February 24, 2016, the Office of Probation communicated with Respondent on several occasions regarding his probation conditions.

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, but instead willfully violated, the following probation conditions:

- (a) Respondent did not file the quarterly report due on January 10, 2016, covering the period from October 1, 2015 through December 31, 2015.
- (b) Respondent has not presented proof of his enrollment and passage of the State Bar Ethics School, despite the fact that the deadline for such proof was May 29, 2015, and that deadline has now long-passed.

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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.)

Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct,² std. 1.5.) The court finds the following with respect to aggravating circumstances.

Prior Discipline

Respondent's prior record of discipline is a factor in aggravation. (Std. 1.5(a).) As noted above, Respondent has one prior imposition of discipline. In that matter, Respondent stipulated to engaging in the unauthorized practice of law and collected illegal legal fees in two other jurisdictions. In aggravation, Respondent committed multiple acts of misconduct and had deprived the former clients of the fees he had received. In mitigation, Respondent had no prior record of discipline after 22 years of practice and he cooperated with the State Bar by entering into a pre-filing stipulation.

Multiple Acts of Misconduct

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

Indifference

Respondent's ongoing failures to comply with the conditions of his probation, albeit on an untimely basis, and his failure to participate in this disciplinary proceeding reflect an indifference to the disciplinary process that is also an aggravating factor. (Std. 1.5(k).)

Mitigation

It was Respondent's burden to establish mitigating factors. (Std. 1.6.) No mitigating factors were shown by the evidence presented to this court.

² All further references to standard(s) or std. are to this source. Effective July 1, 2015, the standards were amended. As this case was submitted after the effective date, the court applies the new version.

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 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 **Mark Bryson Replogle**, previously ordered in Supreme Court case no. S216723 (State Bar Court case nos. 13-O-11836, et al.) 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 that he will remain suspended until the following requirements are satisfied:
 - i. He makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:
 - (1) Jacquelyn McCants in the amount of \$3,200 plus 10 percent interest per year from January 20, 2012; and
 - (2) Nathan Huss in the amount of \$1,747.50 plus 10 percent interest per year from April 6, 2012;
 - 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) 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.³

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 S216723.

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 **Mark Bryson Replogle**, State Bar No. 151200, is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).⁴ This

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³ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

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

inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: May 4, 2016


DONALD F. MILES
Judge of the State Bar Court

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 May 4, 2016, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION TO REVOKE PROBATION AND ORDER OF 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:

MARK B. REPLOGLE
301 S SIGNAL BUTTE RD
LOT 730
APACHE JUNCTION, AZ 85120

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

TERRIE GOLDADE, Office of Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 4, 2016.



Rose M. Luthi
Case Administrator
State Bar Court