

PUBLIC MATTER

FILED

SEP 18 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 16-PM-14952-YDR
)	
VICTOR SALDANA,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND FOR
Member No. 256119)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction¹

In this probation revocation proceeding, Victor Saldana (Respondent), 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 a 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, that he be actually suspended for one year and further subject to the recommended discipline set forth below.



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 July 22, 2016, 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 by regular mail and by certified mail. Respondent did not file a response within 20 days of the service of the motion.

The court took this matter under submission on August 24, 2016.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 3, 2008, and has been a member of the State Bar of California at all times since that date.

Facts

On September 15, 2015, in Supreme Court case No. S226326, 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 actually suspended for 60 days, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed March 18, 2015, (State Bar Court case Nos. 13-O-12363, 13-O-12538, 13-O-14098);
2. Respondent comply with the following probation conditions, including but not limited to:
 - A. 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;

- B. Within 30 days from the effective date of discipline (November 14, 2015), contact the Office of Probation to schedule a meeting;
- C. Comply with specified fee arbitration conditions, including paying \$3,000 plus 10 percent interest per year from August 17, 2012, to Loretta and Kenneth Aparicio; and
- D. Pay restitution to Felipe Sanchez in the amount of \$5,000 plus 10 percent interest per year accruing from April 28, 2011, and providing proof of payment to the Office of Probation by January 13, 2016.

The Supreme Court order became effective 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a)), and it was properly served on Respondent.²

On October 8, 2015, the Office of Probation wrote a letter to Respondent and sent it to his membership address, reminding him of certain terms and conditions of his suspension and the probation imposed pursuant to the Supreme Court's order. The Office of Probation enclosed among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, MPRE examination schedule and information, Ethics/Client Trust Accounting School schedule, and instruction sheets or forms to use in submitting quarterly reports.

Although ordered to contact the Office of Probation by November 14, 2015, to schedule his initial meeting, Respondent did not contact the Office of Probation to schedule the meeting until almost two months later. Deputy Eddie Esqueda of the Office of Probation conducted the

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 transmitted a copy of the Supreme Court's order to Respondent immediately after its filing.

required meeting with Respondent on January 20, 2016. Mr. Esqueda reviewed with Respondent all of his probation conditions and the applicable deadlines.

Respondent's first quarterly report, due January 10, 2016, was filed on January 20, 2016. Respondent has failed to file his April 10, 2016 and July 10, 2016 quarterly reports.

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: (1) Respondent has failed to file the quarterly reports due April 10, 2016 and July 10, 2016; (2) Respondent failed to timely schedule his initial meeting with the Office of Probation; (3) Respondent failed to comply with specified fee arbitration conditions, including paying Loretta and Kenneth Aparicio \$3,000 plus 10 percent interest per year from August 17, 2012; and (4) Respondent has failed to pay restitution to Felipe Sanchez in the amount of \$5,000 plus 10 percent interest per year accruing from April 28, 2011.

As a result, the revocation of Respondent's probation in California Supreme Court order No. S226326 is warranted.

Aggravation³

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

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.

Respondent has one prior record of discipline. In the underlying proceeding, Respondent stipulated to culpability in three client matters for failing to perform legal services with competence, failing to respond to client status inquiries, failing to promptly refund unearned fees and failing to maintain a current membership mailing address. He was ordered suspended from the practice of law for one year, stayed, placed on probation for one year and actually suspended from the practice of law for 60 days. (Supreme Court case No. S226326)

Multiple Acts (Std. 1.5(b).)

Respondent committed multiple acts of wrongdoing, including failing to file two of his quarterly reports.

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

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 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.) Although Respondent was put on notice that his probation status was in jeopardy when the July 22, 2016 motion to revoke his probation was filed and served, Respondent has still failed to file the quarterly reports.

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.5(l).)

Respondent's failure to participate in this proceeding is also an aggravating factor.

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, 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.)

The Office of Probation requested that Respondent be actually suspended for the full amount of the stayed suspension, that Respondent be ordered to comply with California Rules of Court, rule 9.20 and that Respondent be placed on involuntary inactive enrollment pursuant to section 6007, subdivision (d). Given Respondent's failure to pay any restitution, his indifference and his failure to comply with his probation conditions, this court agrees.

Recommendations

The court recommends that the probation of Victor Saldana, State Bar Number 256119, previously ordered in Supreme Court case No. S226326 (State Bar Court case Nos. 13-O-12363, 13-O-12538, and 13-O-14098) be revoked, that the stay of the execution of the one-year suspension be lifted, and that Respondent be suspended from the practice of law in California for a minimum of one year, and he will remain suspended until the following requirements are satisfied:

1. 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) Loretta and Kenneth Aparicio in the amount of \$3,000 plus 10 percent interest per year from August 17, 2012; and
 - (2) Felipe Sanchez in the amount of \$5,000 plus 10 percent interest per year from April 28, 2011.
2. 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 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.)

If Respondent remains suspended for two years or more as a result of not satisfying the preceding requirements, he must also provide satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 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 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.

Multistate Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) as he was previously ordered to do so in Supreme Court case No. S226326. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage.

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.

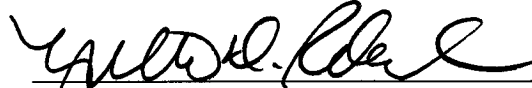
Order of Involuntary Inactive Enrollment

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).⁴ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: September 12, 2016



YVETTE D. ROLAND
Judge of the State Bar Court

⁴ 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 13, 2016, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION TO REVOKE PROBATION AND FOR INVOLUNTARY INACTIVE ENROLLMENT

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

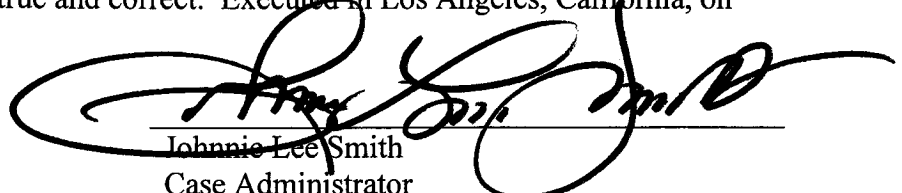
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**VICTOR SALDANA
THE LAW OFFICE OF TONY M. LU
3333 S BREA CANYON RD
DIAMOND BAR, CA 91765**

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

TERRIE GOLDADE, PROBATION DEPT, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 13, 2016.



Johnnie Lee Smith
Case Administrator
State Bar Court