



# PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

**FILED**

**DEC 08 2016**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of

**JOSEPH WALCH,**

A Member of the State Bar, No. 56192

Case No.: 16-PM-16899-DFM

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

### Introduction

On October 14, 2016, the Office of Probation of the State Bar of California (Office of Probation) filed a motion to revoke the disciplinary probation that the California Supreme Court imposed on respondent Joseph Walch<sup>1</sup> (Respondent) in its order No. S097699 (State Bar Court case No. 15-PM-13017.) Even though Respondent was properly served with the present motion to revoke probation at his State Bar membership-records address by certified mail, return receipt requested<sup>2</sup> and by regular mail, Respondent did not participate in this proceeding. On November 10, 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.

<sup>1</sup> Respondent was admitted to the practice of law in California on June 29, 1973, and has been a member of the State Bar of California since that time. As discussed below, Respondent has two prior records of discipline.

<sup>2</sup> Bus. & Prof. Code, § 6002.1, subd. (c); Rules Proc. of State Bar, rules 5.25, 5.314(A); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108 [service in a State Bar Court proceeding is complete upon mailing]; but see also *Jones v. Flowers* (2006) 547 U.S. 220, 225, 234.

### Findings of Fact and Conclusions of Law<sup>3</sup>

On December 16, 2015, the California Supreme Court filed an order in case No. S097699, accepting the State Bar Court's discipline recommendation in State Bar Court case No. 15-PM-13017. In this Supreme Court 2015 order, Respondent's prior probation was revoked; he was suspended for five years, stayed; and he was placed on a new five-year probation with conditions, including actual suspension for a minimum of two years and continuing until Respondent establishes 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)(1).)<sup>4</sup> An additional condition of probation required Respondent to make restitution or reimbursement payments in the minimum amount of \$250 per month to the following payees, and furnish proof of such payments to the State Bar's Office of Probation in Los Angeles:

- (1) 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);
- (2) The legal heirs of Bruce Masters in the amount of \$3,007.72; and
- (3) The legal heirs of Babe Wagner in the amount of \$7,440.35.

That order resulted from a violation by Respondent of the conditions of his probation originally ordered by the California Supreme Court in 2001 in State Bar Court case Nos. 96-O-02896, etc., which probation had been repeatedly extended at Respondent's request by this court until 2015 due to Respondent's ongoing failures to comply with the restitution obligations

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<sup>3</sup> Because Respondent failed to file a response to the motion to revoke probation, the factual allegations in the motion and its supporting documents are treated as admissions. (Rules Proc. of State Bar, rule 5.314(C).) The court admits into evidence the declaration of Respondent's assigned probation deputy, which is set forth on pages 7 through 9 of the motion, and the exhibits attached to the present motion. (Rules Proc. of State Bar, rule 5.314(H).) The court also grants the Office of Probation's November 4, 2016, request for judicial notice.

<sup>4</sup> All further references to standards or stds. are to this source.

in the original order. The Supreme Court's December 16, 2015, order became effective on January 15, 2016 [Cal. Rules of Court, rule 9.18(a)] and has remained in effect since that time. The order was properly served on Respondent.<sup>5</sup>

On February 16, 2016, Respondent left a voicemail message for his probation deputy, asking for a call back. Later that same day, Respondent's probation deputy called Respondent back and left a voicemail message for him. Then, in March and April 2016, Respondent and his probation deputy exchanged emails and letters regarding Respondent's compliance with California Rules of Court, rule 9.20. On July 29, 2016, Respondent's probation deputy mailed and emailed a letter to Respondent regarding his failure to provide proof of restitution payments. Neither of these July 29, 2016, letters were returned as undeliverable or for any other reason.

Despite the Office of Probation's efforts to make Respondent aware of the conditions of his probation and to secure his compliance with them, Respondent willfully violated the restitution condition of his probation by failing to provide any proof that he has made any of the nine required \$250 minimum monthly restitution payments for the months between January 15, 2016, the effective date of his new five-year probation, and the filing of the instant motion to revoke in October 2016, and no payments have been received by the Client Security Fund from Respondent at any time during that nine-month period.

### **Aggravation**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

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<sup>5</sup> In the absence of evidence to the contrary, the court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to Respondent immediately after its filing. (Cal. Rules of Court, rule 8.532(a); Evid. Code, § 664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

### **Prior Discipline**

Respondent has two prior impositions of discipline. These prior impositions are factors in aggravation. (Std. 1.5(a).)

#### ***Case Nos. 96-O-02896, etc***

As noted above, in its order of July 26, 2001, the Supreme Court imposed on Respondent a five-year stayed suspension and a five-year probation with conditions including an actual suspension for a minimum of eighteen months and continuing until (a) Respondent complied with former standard 1.4(c)(ii) and (b) paid restitution totaling more than \$27,000 (plus interest) in five client matters. In that prior disciplinary proceeding, 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.

Initially, Respondent was required to make minimum monthly restitution payments of at least \$50 and to pay the more than \$27,000 in restitution plus interest during the first four years of his probation. Over the years, Respondent made and the State Bar Court granted numerous motions extending the time for Respondent to pay the restitution and interest. Despite those extensions, Respondent failed to comply with his obligations to make restitution, resulting in his second discipline, discussed below.

#### ***Case No. 15-PM-13017***

As noted above, in its order of December 16, 2015, the Supreme Court revoked the probation imposed on Respondent under its July 26, 2001, order and placed Respondent on a new five-year stayed suspension and a new five-year probation with conditions, including a two-year actual suspension continuing until Respondent complies with standard 1.2(c)(1) and restitution totaling more than \$10,000 (plus interest) to the heirs of two former clients and more

than \$54,300 to the Client Security Fund for payments it made to Respondent's former clients. Respondent was required to make minimum monthly restitution payments of at least \$250. This discipline was imposed on Respondent because he had willfully violated the restitution probation condition imposed on him under the Supreme Court's July 26, 2001, order, as it was thereafter modified and extended by the State Bar Court. Respondent's failure to make any restitution payments after March 2015 was a significant aggravating circumstance.

This record of two prior disciplines is an aggravating factor. (Std. 1.5(a).)

### **Lack of Cooperation**

Respondent's failure to participate in this disciplinary proceeding is also an aggravating factor. (Std. 1.5(l).) Respondent's failure to appear and participate in this proceeding establishes that Respondent fails both to appreciate the seriousness of the charges against him and to comprehend the importance of fulfilling his duty as an attorney to participate in disciplinary proceedings. (Bus. & Prof. Code, § 6068, subd. (i); *Conroy v. State Bar* (1991) 53 Cal.3d 495, 507.) “ “It is well settled that an attorney's contemptuous attitude toward the disciplinary proceedings is relevant to the determination of an appropriate sanction.” ’ [Citation.]” (*Conroy v. State Bar, supra*, 53 Cal.3d at p. 507.)

### **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.

### **Discussion**

In determining the appropriate level of discipline in a probation revocation proceeding, the court considers the “total length of stayed suspension which could be imposed as an actual suspension ....” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) The court also considers the seriousness of the probation violations and the attorney's

efforts, if any, to comply with the conditions of probation. (*Ibid.*) Here, the nature of Respondent's probation violation is serious and this is the second time that Respondent is being disciplined for failing to make the court-ordered restitution to the victims of his prior misconduct, notwithstanding orders dating back to 2001.

Having considered the foregoing factors, the court concludes that Respondent's present probation violations warrant the greatest level of discipline permissible, which is the imposition of an actual suspension equal to the period of stayed suspension imposed on Respondent in the Supreme Court's December 16, 2015, order. (Rules Proc. of State Bar, rule 5.312; *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540; *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531.)

The court rejects the Office of Probations request to order Respondent's involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (c) in light of Respondent's current suspension under the Supreme Court's December 16, 2015 order. (*In the Matter of Tiernan, supra*, 3 Cal. State Bar Ct. Rptr. at p. 531.)

### **Recommendations**

#### **Discipline**

The court recommends that the probation imposed on respondent **Joseph Walch**, State Bar No. 56192, in the Supreme Court's order of December 16, 2015, in case No. S097699 (State Bar Court case No. 15-PM-13017) be revoked and that Respondent be actually suspended from the practice of law for a minimum of five years and 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)(1).)

## **Probation**

It is further recommended that Respondent be placed on probation for five years on the following conditions:

1. Respondent must make restitution or reimbursement payments in the minimum amount of \$250 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);
  - b) The legal heirs of Bruce Masters in the amount of \$3,007.72; and
  - c) The legal heirs of Babe Wagner in the amount of \$7,440.35.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 30 days after the effective date of the Supreme Court order in this proceeding, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy, either in person or by telephone. Respondent must promptly meet with the probation deputy as directed and upon request.
4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.

### **Multistate Professional Responsibility Examination**

It is not recommended that Respondent be again ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) during the period of his suspension as he was previously ordered to do so in the Supreme Court's order of December 2015.

### **California Rules of Court, Rule 9.20**

It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because he has been actually suspended at all times since September 20, 2015, when he was ordered inactive by this court pursuant to Business and Professions Code section 6007, subdivision (d).

### **Costs**

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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.

Accordingly, **Joseph Walch**, State Bar No. 56192, is ordered to be involuntarily enrolled



inactive under section 6007, subdivision (d)(1).<sup>6</sup> This inactive enrollment order will be effective three calendar days after the date on which this order is served.

Dated: December 8, 2016

  
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**DONALD F. MILES**  
Judge of the State Bar Court

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<sup>6</sup> 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 December 8, 2016, 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:

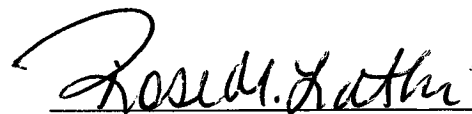
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOSEPH WALCH  
1160 NO. OGDEN DR. 111  
LOS ANGELES, CA 90046

- 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 December 8, 2016.



Rose M. Luthi  
Case Administrator  
State Bar Court