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SEP 26 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 17-PM-04034-YDR (S223448)
)	
FRANK EDWARD GOSECO,)	ORDER GRANTING MOTION TO REVOKE
)	PROBATION AND FOR INVOLUNTARY
A Member of the State Bar, No. 132732.)	INACTIVE ENROLLMENT
)	
)	

Introduction¹

In this probation revocation proceeding, Frank Edward Goseco (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 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, two-year suspension be lifted, and 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

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.

general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

Significant Procedural History

On July 11, 2017, the Office of Probation filed and properly served a motion to revoke probation on Respondent.² The motion was mailed to Respondent's official membership records address. Respondent did not file a response within 20 days of the service of the motion.

The court took this matter under submission on August 30, 2017.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 17, 1987, and has been a member of the State Bar of California at all times since that date.

Facts

On March 19, 2015, in Supreme Court case no. S223448, the California Supreme Court ordered, among other things, that Respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, that he be placed on probation for four years, and that he be actually suspended for six months.

The Supreme Court also ordered that Respondent comply, among other things, with certain probation conditions. As stated below, Respondent failed to comply with the following probation conditions:

1. Within 30 days from the effective date of discipline – by May 18, 2015, contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation. Respondent did not comply in that he contacted his probation deputy almost two months late, on July 10, 2015, to

² The court takes judicial notice of the certified copy of Respondent's prior record of discipline attached to the motion (Supreme Court order No. 223448; State Bar Court case nos. 14-C-02707; 14-C-02708; 14-C-02710).

schedule his required meeting. (The meeting was then held as scheduled on July 14, 2015.);

2. Comply with the State Bar Act and the Rules of Professional Conduct and report such compliance in writing, under penalty of perjury, to the Office of Probation each January 10, April 10, July 10, and October 10 (quarterly reports). Respondent did not comply in that he failed to file his first quarterly report which was due July 10, 2015. On July 10, 2015, Respondent e-mailed a letter with a "re:" line stating that it was his first quarterly report; however, it did not set forth the period it covered, was not under penalty of perjury, and did not state that he had complied with the Rules of Professional Conduct and the Business and Professions Code. Respondent has timely filed the quarterly reports due October 10, 2015 through April 10, 2017; in each report, Respondent has stated that he is in compliance with the State Bar Act, Rules of Professional Conduct, and all probation conditions, notwithstanding the numerous violations set forth below.
3. Respondent was ordered to comply with all conditions of probation imposed in his underlying criminal matters and declare such in conjunction with his quarterly reports to be filed with the Office of Probation (underlying criminal matter reports). Respondent did not comply in that he has failed to file an underlying criminal matter report with his quarterly report due July 10, 2015. On July 10, 2015, Respondent e-mailed a letter with a "re:" line stating that it was his first quarterly report; however, it did not set forth the period it covered and was not attested to under penalty of perjury. In his October 10, 2015 and January 10, 2017³ quarterly reports, Respondent checked

³ Respondent attached a "payment confirmation" to the Orange County Superior Court, but did not provide any evidence to demonstrate that his criminal probation was modified, terminated, or expired.

the boxes stating that during the reporting period, his criminal probation was modified, terminated or expired and that he had attached a statement of facts or copy of the document effectuating said change; however, no statement of facts or document(s) evidencing said changes were attached.

4. Respondent was ordered to comply with many substance abuse conditions but failed to do so. Specifically,
 - a. Upon the request of the Office of Probation, Respondent was to provide the Office of Probation with medical waivers and access to all of Respondent's medical records. By letter mailed and e-mailed to Respondent on April 14, 2015, the Office of Probation requested that Respondent provide a medical waiver by May 18, 2015. Respondent did not comply in that he failed to provide the requested medical waiver until almost five months later – on October 10, 2015.
 - b. Respondent was ordered to attend at least four Alcoholics Anonymous (AA) meetings per month. As a separate reporting requirement, Respondent was ordered to provide to the Office of Probation satisfactory proof of attendance during each month, on or before the 10th day of the following month. Satisfactory proof required that Respondent include, among other things, contact information for the meeting secretary or other representative willing to assist the Office of Probation in confirming Respondent's attendance. Respondent did not comply by failing to timely file the monthly reports on at least 18 occasions between June 2015 and June 2017 and by failing to consistently attend four AA meetings each month.
 - c. Satisfactory proof of attendance of AA meetings must include the name of Respondent's sponsor (if Respondent has a sponsor), address, telephone number,

and another other contact number. Respondent was ordered to provide this information within 10 calendar days of the effective date of discipline. The effective date of Respondent's discipline was April 18, 2015, so he was to provide the ordered information by April 28, 2015. He did not do so until July 10, 2015.

- d. Satisfactory proof of attendance of AA meetings was to also include the name of the meeting; the location of the meeting; and the name, address, telephone number, and other contact information to assist the Office of Probation in confirming Respondent's attendance. Although Respondent's proof of attendance included the name of the meeting, they did not include the meeting location (except for Respondent's report filed April 10, 2017, which did include the locations).
- e. Respondent was required to comply with numerous outpatient substance abuse treatment conditions in connection with the Salvation Army program.

Respondent was required to comply as follows:

- (i) Within seven calendar days after his completion of the Salvation Army outpatient⁴ treatment program, Respondent was to provide written notice to Office of Probation by (1) certified mail, return receipt requested, correctly and timely addressed to his probation deputy, or (2) timely personal service to Office of Probation Supervising Attorney. By e-mail sent July 10, 2015, Respondent provided a certificate of completion of the Salvation Army treatment program which was dated April 8, 2015. As such, it was not the notice required in his stipulation, and even if it had been, it was late.

⁴ The Office of Probation notes that in Respondent's July 10, 2015 e-mail, he included a letter stating that the Salvation Army program was "residential." However, the certificate provided by Respondent does not specify whether the program was residential or outpatient.

(ii) Within 15 calendar days after his completion of the Salvation Army treatment program, Respondent was to provide the Office of Probation the name, address and telephone number of an ASAM (American Society of Addiction Medicine) certified medical doctor who agreed to treat Respondent; the Office of Probation was to verify that the medical doctor was ASAM certified and that the doctor had agreed to actually evaluate and treat Respondent. Because Respondent completed the treatment program on April 8, 2015, Respondent was to provide the ordered information by April 23, 2015. Respondent did not do so until more than a year later, on May 10, 2016.

(iii) Within 15 calendar days after his completion of the Salvation Army treatment program, Respondent was to provide a complete copy of Respondent's stipulation to an ASAM certified medical doctor. Because Respondent completed the treatment program on April 8, 2015, Respondent was to provide the doctor with the stipulation by April 23, 2015. In an e-mail sent May 10, 2016, Respondent asserted that he gave Dr. Kamal Artin "a complete packet of my probation order and requirements." Respondent did not set forth the date he gave these materials to Dr. Kamal Artin and did not provide a copy of what was provided so that the Office of Probation could confirm that the "packet" included a complete copy of the stipulation.

(iv) Within 15 calendar days of his completion of the Salvation Army treatment program, Respondent was to execute all necessary waivers of confidentiality with an approved ASAM certified medical doctor. Because Respondent completed the treatment program on April 8, 2015, Respondent was to provide the waiver by April 23, 2015. In an e-mail sent October 10, 2016, Respondent provided the

Office of Probation a general authorization to obtain and disclose medical information, but there was no evidence that Respondent provided the waiver to any approved ASAM certified medical doctor.

(v) Within 30 calendar days of his completion of the Salvation Army treatment program, Respondent was to provide the Office of Probation an original signed declaration from an approved ASAM certified medical doctor acknowledging receipt of a complete copy of the stipulation. Because Respondent completed the treatment program on April 8, 2015, Respondent was to provide the waiver by May 8, 2015. At no time has Respondent provided the required declaration.

(vi) Within 30 calendar days after his completion of the Salvation Army treatment program, Respondent was to provide (1) a copy of the waiver provided to an approved ASAM certified medical doctor, and (2) a signed declaration from an approved ASAM certified medical doctor acknowledging receipt of the waiver. Because Respondent completed the treatment program on April 8, 2015, Respondent was to provide the waiver and declaration by May 8, 2015. At no time has Respondent provided the required waiver and declaration.

(vii) Within 45 calendar days after his completion of the Salvation Army treatment program, Respondent was to undergo an evaluation with an approved ASAM certified medical doctor for specified purposes including setting treatment conditions, which become part of his probation requirements. Respondent was ordered to provide the Office of Probation with proof of treatment compliance or waiver requested by the Office of Probation. Because Respondent completed the treatment program on April 8, 2015, Respondent was to undergo an evaluation by May 23, 2015. Pursuant to the evaluation from Dr. Kamal Artin provided by

Respondent on May 10, 2016, Respondent was almost a year late in obtaining the evaluation on May 9, 2016.

(viii) Within 60 calendar days after his completion of the Salvation Army treatment program, Respondent was to provide a copy of the approved ASAM certified medical doctor's written report to the Office of Probation. Because Respondent completed the treatment program on April 8, 2015, Respondent was to provide the doctor's written report/evaluation by June 7, 2015. Respondent was late in doing so on May 10, 2016.

(ix) Respondent was to report his compliance with treatment conditions under penalty of perjury in his quarterly reports. Respondent failed to report his compliance on July 10, 2015, and January 10, 2017.

(x) Respondent was ordered to have his approved ASAM certified medical doctor submit to the Office of Probation an original, signed declaration that Respondent is in compliance with the treatment conditions by each January 10, April 10, July 10, and October 10 quarterly report. Respondent failed to provide such a declaration on July 10 and October 10, 2015; January 10, April 10, July 10, and October 10, 2016; and January 10, April 10, and July 10, 2017.

The Supreme Court order became effective on April 18, 2015, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.⁵

⁵Although 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 performed his duty and transmitted a copy of the Supreme Court's order to Respondent immediately after its filing.

On April 14, 2015, the Office of Probation sent a letter to Respondent at his official membership address, reminding him of the terms and conditions of the suspension and probation imposed by the Supreme Court's order and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, and instruction sheets and forms to use in submitting quarterly reports. The letter was returned as undeliverable. On the same day, the Office of Probation emailed to Respondent the same letter with attachments. A delivery confirmation was received by the Office of Probation.

On June 5, 2015, the Office of Probation again sent an e-mail and a letter to Respondent setting forth numerous conditions with which he was not complying and including the April 14, 2015 letter with attachments.

On January 10, 2016, Respondent provided the Office of Probation proof of successful completion of the Ethics School session offered on December 10, 2015.

On April 24, 2017, Respondent provided the Office of Probation proof of passage of the MPRE offered on March 18, 2017. Because Respondent's proof was due April 18, 2016, he was late.

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 probation conditions, as ordered by the Supreme Court in S223448, including the following: (1) Respondent was late in scheduling a meeting

with the Office of Probation; (2) Respondent failed to file an underlying criminal matter report with his quarterly reports; (3) Respondent failed to timely provide the Office of Probation with a medical waiver and access to his medical records; (4) Respondent failed to attend four Alcoholics Anonymous meetings every month and provide proof of such attendance on several quarterly reports; and (5) Respondent failed to provide adequate information regarding his Salvation Army outpatient treatment program.

As a result, the revocation of Respondent's probation in California Supreme Court order No. S223448 is warranted.

Aggravation⁶

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

In the underlying matter, Respondent stipulated to three misdemeanor alcohol-related convictions (driving under the influence in 2008 and 2013; aggravated trespass in 2008; and hit-and-run in 2013). He was ordered suspended for two years, stayed, and placed on probation for four years, including an actual suspension of six months. (Supreme Court case No. S223448, effective April 18, 2015; State Bar Court case Nos. 14-C-02707; 14-C-02708; 14-C-02710.)

Multiple Acts (Std. 1.5(b).)

Respondent committed multiple acts of wrongdoing, including failing to timely provide the Office of Probation with a medical waiver and access to all of his medical records; failing to provide sufficient information on his substance abuse recovery program; failing to file his first quarterly report; failing to timely schedule a meeting with the Office of Probation; failing to timely provide proof of weekly attendance at Alcoholics Anonymous meetings; failing to attend four AA meetings every month; and failing to timely provide proof of passage of the MPRE.

⁶ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Mitigation

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, and standard 1.8 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 and Respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The Office of Probation requested that Respondent be actually suspended for the full amount of stayed suspension and that he should remain suspended until he complies with standard 1.2(c)(1). The court agrees.

Recommendations

The court recommends that the probation of Respondent Frank Edward Goseco, member No. 132732, imposed in Supreme Court case No. S223448 (State Bar Court case Nos. 14-C-02707; 14-C-02708; 14-C-02710) be revoked; that the previous stay of execution of the suspension be lifted; and that Respondent be actually suspended from the practice of law for a minimum of two years and he will remain suspended until Respondent provides proof to the State Bar Court of his rehabilitation, fitness to practice and 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).)

Multistate Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he recently took it on March 18, 2017.

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.⁷

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.

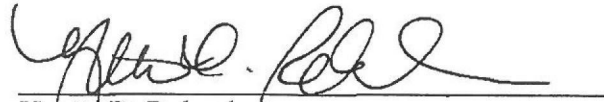
Order of Involuntary Inactive Enrollment

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.

⁷ 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.)

Respondent is ordered to be involuntarily enrolled inactive under section 6007, subdivision (d)(1).⁸ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: September 26, 2017



Yvette D. Roland
Judge of the State Bar Court

⁸ 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 26, 2017, 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:

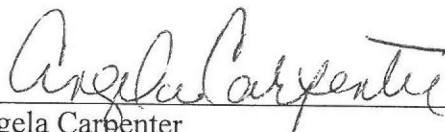
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

FRANK E. GOSECO
9 CARMESI
RANCHO SANTA MARGARITA, CA 92688 - 1655

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

Terrie L. Goldade, Office of Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 26, 2017.



Angela Carpenter
Case Administrator
State Bar Court