

# PUBLIC MATTER

FILED  
OCT 20 2017 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. 17-PM-04290-CV
	)	
DOUGLAS ROBERT SHOEMAKER,	)	ORDER GRANTING, IN PART,
	)	MOTION TO REVOKE PROBATION
A Member of the State Bar, No. 230379.	)	
_____	)	

### Introduction<sup>1</sup>

In this contested probation revocation proceeding, respondent Douglas Robert Shoemaker (Respondent) is charged with violating certain probation conditions imposed by the California Supreme Court. 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 period of suspension previously stayed; (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 pursuant to section 6007, subdivision (d).

The court finds, by a 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 be revoked; that the previously stayed, one-year suspension be lifted; that Respondent will be suspended from the

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Business and Professions Code. All references to standard(s) or std. are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.



practice of law for one year; that execution of that suspension be stayed; and Respondent will be placed on probation for one year on conditions, including that he be suspended for the first six months of his probation.

### **Significant Procedural History**

On July 25, 2017, the Office of Probation filed and properly served a motion to revoke probation (Motion to Revoke) on Respondent by certified mail and regular mail.<sup>2</sup> Respondent filed a response to the motion on August 21, 2017. Respondent admitted in part, and denied in part, the allegations against him, and requested a hearing pursuant to rule 5.314(E) of the State Bar Rules of Procedure.

The hearing in this matter was held on September 20, 2017. The Office of Probation was represented by Supervising Attorney Terrie Goldade. Respondent represented himself. At the conclusion of the hearing on September 20, 2017, the court took the matter under submission for decision.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on April 26, 2004, and has been a member of the State Bar at all times since.

### **Probation Violations**

On December 7, 2016, in Supreme Court case No. S237419 (State Bar Court No. 15-O-14304), 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, and that he be placed on probation for one year subject to certain

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<sup>2</sup> The certified copy of Respondent's address history from April 26, 2004, to July 19, 2017, included in exhibit one, attached to the Office of Probation's motion to revoke Respondent's probation, is not sufficient to establish that the motion was properly served on Respondent on July 25, 2017. Accordingly, the court takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h), which reflect that the motion was properly served on Respondent on July 25, 2017.

conditions, including a 60-day suspension, as recommended by the Hearing Department of the State Bar Court in its August 4, 2016, Order Approving “Stipulation Re Facts, Conclusions of Law and Disposition.” (Exh. 2, p. 00006.)

2. Respondent comply, among other things, with the following probation conditions:

A. Within 30 days after the effective date of his discipline, i.e., by February 5, 2017, Respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation. Respondent was also ordered to meet with the probation deputy either by telephone or in person, upon the direction of the Office of Probation.

B. Comply with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation. Respondent must report such compliance in writing, under penalty of perjury, to the Office of Probation each January 10, April 10, July 10, and October 10 of the period of probation (quarterly reports).

The Supreme Court order became effective on January 6, 2017, i.e., 30 days after it was filed. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.<sup>3</sup>

On January 4, 2017, the Office of Probation uploaded to Respondent’s attorney profile on the State Bar’s website a reminder letter outlining certain terms and conditions of his probation and setting forth compliance deadlines. ( Exh. 3, pp. 00002-0004.) Among other things, the letter specifically addressed Respondent’s requirement to contact his probation deputy and schedule the required meeting, and also addressed Respondent’s quarterly reporting requirement,

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<sup>3</sup> Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court’s order on Respondent, rule 8.532(a) of the California Rules of Court required the Supreme Court clerk to promptly transmit a copy of the order to the parties upon filing. Moreover, 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 or her duty and transmitted a copy of the Supreme Court’s order to Respondent immediately after its filing.

including that his reports were due quarterly, beginning April 10, 2017. Along with the letter were, among other things, the Supreme Court's December 7, 2016 order imposing discipline; the portion of the hearing department's Order Approving "Stipulation Re Facts, Conclusions of Law and Disposition" setting forth the terms and conditions of probation; and a quarterly report form and a quarterly report instruction sheet. (Exh. 3, pp. 00005-00016.)

The Office of Probation also sent an e-mail to Respondent on January 4, 2017, informing him to go to his attorney profile on the State Bar's website to review, download, and print a reminder letter with informational attachments prepared for him by the Office of Probation. Delivery of this e-mail was completed. (Exh. 1, p. 9, ¶ 9b.; Exh. 3, p. 00018.)

Respondent failed to contact the Office of Probation and schedule his required meeting with his probation deputy by February 5, 2017, and he also failed to meet with his probation deputy.

On June 23, 2017, the Office of Probation sent Respondent a letter to his State Bar membership records address setting forth his non-compliance with the condition that he contact the Office of Probation and schedule a meeting with his probation deputy by February 5, 2017. Enclosed with the letter was a copy of the Office of Probation's January 4, 2017 letter with attachments, which was uploaded to Respondent's State Bar membership profile on the State Bar's website. The letter was not returned to the Office of Probation by the United States Postal Service as undeliverable or for any other reason. The letter was also e-mailed to Respondent on June 23, 2017. The e-mail was not returned as undeliverable by the internet provider.

Respondent claims that he submitted to the Office of Probation his first quarterly report due April 10, 2017, and his second quarterly report due July 10, 2017, on July 11, 2017. However, the Office of Probation never received the reports in July 2017. Instead, the Probation

Office received copies of the quarterly reports on August 21, 2017, as exhibits which were attached to Respondent's August 21, 2017 Response to the Motion to Revoke Probation.

At the hearing on this matter, Respondent admitted culpability regarding the first allegation set forth in the Office of Probation's Motion to Revoke Probation. Specifically, Respondent admitted that he had not contacted the Office of Probation and scheduled a meeting with his assigned probation deputy to discuss the terms and conditions of his probation within 30 days of the effective date of his discipline (i.e., by February 5, 2017). Respondent also admitted that as of the date of the hearing, he had not met with the probation deputy assigned to his matter, either by telephone or in person. Respondent left a voice mail message for the probation deputy on August 21, 2017, indicating that he wished to discuss a resolution to the Motion to Revoke Probation, as well as to calendar the required meeting.

Respondent further acknowledged that he had not timely filed<sup>4</sup> his first two quarterly reports, which had been due on April 10, 2017, and July 10, 2017, respectively, by their due dates.

### **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 of 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 case No. S237419. He failed to: (1) contact his probation deputy and schedule his

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<sup>4</sup> The probation condition did not specifically require the filing of quarterly reports but, rather, their submission. Nevertheless, Respondent did not timely submit the quarterly reports.

required meeting and failed to meet with his probation deputy; and (2) timely submit his quarterly reports due April 10, 2017 and July 10, 2017.

Although Respondent admitted to filing the reports late, he denied a “complete” failure to file the reports. In response to Respondent’s assertion that he had not completely failed to comply with the quarterly reporting requirement, the Office of Probation indicated that it would amend the motion to conform to proof<sup>5</sup> or stipulate that the reports were eventually filed on August 21, 2017, but had not been filed on July 11, 2017, as Respondent had asserted. The Office of Probation pointed out that Respondent had provided no evidence to substantiate his claim that the reports were mailed on July 11, 2017, such as a copy of the envelope with proper postage or stamps, thereon, or a declaration, made under penalty of perjury, attesting to the fact that Respondent had mailed the two quarterly reports at issue on July 11, 2017. Despite Respondent’s untimeliness in filing of the two quarterly reports, the Office of Probation acknowledges that Respondent now has completed his quarterly reporting requirement in that neither of the two reports remains outstanding. However, as the Office of Probation points out, although Respondent has now completed the condition, he, nonetheless, failed to comply with its requirements by failing to file the reports by their due dates.

As a result, the revocation of Respondent’s probation in California Supreme Court case No. S237419 is warranted.

### **Aggravation**

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

Respondent has one prior record of discipline. On December 7, 2016, the Supreme Court filed an order in case No. S237419 (State Bar Court No. 15-O-14304) (the underlying matter)

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<sup>5</sup> The court grants the Office of Probation’s request. Furthermore, although the Motion to Revoke alleged that Respondent failed to file the reports, at the time the motion was filed, Respondent had not, in fact, filed such reports.

suspending Respondent from practicing law in California for one year; staying execution of that suspension; and placing Respondent on probation for one year subject to certain conditions, including that Respondent be suspended from practicing law for the first 60 days of his probation. In that underlying matter, Respondent stipulated to having falsely reported to the State Bar that he had complied with his Minimum Continuing Legal Education (MCLE) requirements (when he knew he had not so complied), thereby committing an act of moral turpitude, dishonesty or corruption in willful violation of section 6106. He also stipulated to failing to cooperate and participate in a State Bar disciplinary investigation. The court gives great weight to this aggravating circumstance.

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

Respondent committed multiple acts of wrongdoing, which include: (1) his failure to contact and schedule a meeting with his probation deputy; (2) his failure to submit and file his April 10, 2017 quarterly report; and (3) his failure to submit and file his July 10, 2017 quarterly report in the manner set forth by the Supreme Court in its December 7, 2016 order in case No. S237419. However, the court assigns only modest weight to this aggravating factor, as the violations arose from failing to comply with one Supreme Court order. (*In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, 355.)

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

An attorney's continued failure to comply with his probation conditions after being notified of that non-compliance 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 notified in the Office of Probation's June 23, 2017 letter of his non-compliance with the condition that he contact the Office of Probation and schedule a meeting

with his probation deputy by February 5, 2017, as of the filing date of the Motion to Revoke on July 25, 2017, Respondent still had not done so.

### **Mitigation**

It was Respondent's burden to establish mitigating factors. Respondent, however, did not present any evidence in mitigation 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(a) requires that the court recommend greater discipline in this matter than that imposed in the underlying disciplinary proceeding. However, 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.)

As of the filing of the motion seeking revocation of his probation, Respondent had not contacted the Office of Probation and scheduled a meeting with his probation deputy. This is the first act required of a probationer and requires only a simple telephone call or e-mail, yet it ensures that a probationer understands the terms and conditions of his discipline. Respondent was provided with notice of the terms and conditions of his disciplinary probation, yet he failed to comply with them, despite repeated reminders from the Office of Probation. Respondent's failure to contact the Office of Probation and schedule and hold the required meeting with his probation deputy demonstrates Respondent's failure to understand or appreciate his professional obligations.

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In addition, Respondent has failed to timely submit his first and second quarterly reports in which he is required to report, in writing and under penalty of perjury, his compliance with the State Bar Act, the Rules of Professional Conduct, and all the conditions of his probation. “At a minimum, quarterly probation reporting is an important step towards an attorney probationer’s rehabilitation because it requires the attorney, four times a year, to review and reflect upon his professional conduct . . . . In addition, it requires the attorney to review his conduct to ensure that he complies with all of the conditions of his disciplinary probation.” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.)

Absent compelling mitigating circumstances, an attorney who willfully violates a significant probation condition can anticipate that the expected discipline will be an actual suspension. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 574.) Furthermore, “the greatest amount of discipline would be merited for violations which show a breach of a condition of probation significantly related to the misconduct for which probation was given. This would be especially significant in circumstances raising a serious concern about the need for public protection or showing the probationer’s failure to undertake rehabilitative steps.” (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

In the underlying disciplinary matter, Respondent’s misconduct involved misrepresentations with respect to completing MCLE requirements. The probation condition requiring Respondent to submit quarterly reports, in which he is required to report, in writing and under penalty of perjury, his compliance with the State Bar Act, the Rules of Professional Conduct, and all the conditions of his probation is a significant probation condition; is related to the misconduct for which probation was imposed; and his failure to submit both his first and second quarterly reports raises concern about public protection and whether Respondent has

made efforts towards rehabilitation. The court, therefore, finds that a significant period of actual suspension is warranted in this matter.

The Office of Probation requested, among other things, that Respondent's probation be revoked and that one year of actual suspension be recommended as the discipline in this matter. Probation does not need to be recommended in every case imposing a period of actual suspension, such as where (1) there are other ways available to "adequately protect the public and test the attorney's rehabilitation" (*In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 300); (2) based on the nature of the misconduct, the amount of time since the violations were committed, "or clear evidence of an attorney's successful rehabilitation" (*Ibid*), probation is not appropriate or needed; and (3) "there is clear evidence that [the attorney] . . . will not comply with . . . [probation] conditions." (*In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. at p. 300.) Although the court finds that a significant period of actual suspension is warranted in this matter, the court notes that as of the hearing in this matter, Respondent had submitted his required quarterly reports. This evidences to the court that Respondent is amenable to probation, and the full period of stayed suspension in the underlying matter is not warranted.

When an attorney on probation has not complied with the self-reporting condition of his disciplinary probation, at a minimum, the discipline should require that the attorney prospectively demonstrate that he is now able and willing to comply with his reporting requirement. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 705.) The court therefore finds that a significant period of actual suspension, combined with a period of stayed suspension and probation is not only necessary but is the appropriate discipline in this matter to ensure protection of the public, the courts, and the legal profession.

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## Recommendations

### **Discipline**

The court recommends that the probation of Respondent Douglas Robert Shoemaker, member No. 230379, imposed in Supreme Court case No. S237419 (State Bar Court No. 15-O-14304) be revoked; that the previous stay of execution of the suspension be lifted; and that Respondent be suspended from the practice of law for a period of one year; that execution of that suspension be stayed; and that Respondent be placed on probation for a period of one year on the following conditions:

1. Respondent Douglas Robert Shoemaker is suspended from the practice of law for the first six months of probation.
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 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.
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. 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.
5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.
6. Within one year after the effective date of the discipline herein, 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.)

7. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these 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. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### **Multistate Professional Responsibility Examination**

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was previously ordered to do so in Supreme Court case No. S237419 and remains under an obligation to comply with this requirement.

#### **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.<sup>6</sup>

#### **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.

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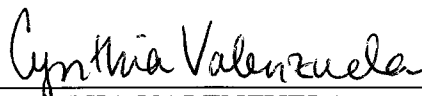
<sup>6</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

**Request for Involuntary Inactive Enrollment**

The Office of Probation also seeks Respondent's involuntarily inactive enrollment pursuant to section 6007, subdivision (d). 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.

Although the requirements of section 6007, subdivision (d)(1), have been met, after considering the protection of the public and, in particular, the length of the recommended actual suspension in this matter, the court will not order Respondent's involuntary inactive enrollment. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531 ["To order the involuntary inactive enrollment of an attorney under subdivision (d) any time its requirements are met without regard to whether there is an issue of public protection and to the length of the actual suspension recommended could conceivably 'defeat or materially impair' the Supreme Court's inherent prerogatives."])

Dated: October 20, 2017

  
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CYNTHIA VALENZUELA  
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 October 20, 2017, I deposited a true copy of the following document(s):

**ORDER GRANTING, IN PART, MOTION TO REVOKE PROBATION**

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:

**DOUGLAS R. SHOEMAKER  
LAW OFFICES OF DOUGLAS R. SHOEMAKER  
20058 VENTURA BLVD # 197  
WOODLAND HILLS, CA 91364**

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

**TERRIE L. GOLDADE, Probation, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 20, 2017.



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Paul Barona  
Case Administrator  
State Bar Court