

PUBLIC MATTER

FILED
JUL 26 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-13677-WKM
)	
JEFFREY ALAN DICKSTEIN,)	ORDER GRANTING MOTION TO REVOKE
)	PROBATION AND
Member No. 70638,)	ORDER OF INACTIVE ENROLLMENT (Bus.
)	& Prof. Code, § 6007, subd. (d)(1).)
<u>A Member of the State Bar.</u>)	

Introduction¹

The Office of Probation of the State Bar of California (Probation Office), represented by Supervising Attorney Terrie Goldade, filed a motion seeking to revoke the two-year disciplinary probation that the Supreme Court imposed on respondent **JEFFREY ALAN DICKSTEIN**² in its November 10, 2015, order in *In re Jeffrey Alan Dickstein on Discipline*, case number S228801 (State Bar Court case number 10-C-07932) (*Dickstein I*). (§ 6093, subds. (b); Rules Proc. of State Bar, rule 5.310 et seq.)

As set forth *post*, the court finds, by a preponderance of the evidence (§ 6093, subd. (c); Rules Proc. of State Bar, rule 5.311), that respondent willfully failed to comply with two of the conditions of his probation as charged in the motion to revoke probation. In addition, in light of

¹ Unless otherwise indicated, all statutory references are to the California Business and Professions Code.

² Respondent was admitted to the practice of law in California on December 22, 1976, and has been a member of the State Bar of California since that time.

statements to the Probation Office that he will not comply with the conditions of his probation, the court finds that respondent's probation violations were committed deliberately and establish that respondent has not undertaken, and refuses to undertake, the necessary steps to rehabilitate himself from the misconduct underlying his disciplinary probation. Accordingly, the court will grant the motion to revoke probation and recommend an actual suspension of one year, which is the full period of the stayed suspension imposed on him in *Dickstein I*. Additionally, the court will not recommend that respondent be again placed on probation, but will instead recommend that respondent's one-year actual suspension continue until he establishes his rehabilitation, fitness to practice, and learning in the law in accordance with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1).³ Finally, in light of respondent's stated refusal to comply with the conditions of his probation, protection of the public compels the court to order that respondent be involuntarily enrolled as an inactive member of the State Bar of California under section 6007, subdivision (d)(1) (inactive enrollment upon finding of probation violation).

Procedural History

On May 31, 2016, the Probation Office filed and properly served its motion to revoke probation on respondent by certified mail, return receipt requested, at his membership records address. The service of the motion on respondent was deemed complete when mailed. (Cf. § 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.) Thereafter, Respondent failed to file a response to the motion to revoke probation, and the time in which respondent had to file a response has expired.

The Probation Office did not request a hearing on the motion. Accordingly, the court took the motion under submission for decision without a hearing on July 1, 2016.

³ All further references to standards are to this source.

Findings of Fact and Conclusions of Law

Because respondent failed to file a response to the motion to revoke probation, the factual allegations contained 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 (1) the declaration of respondent's assigned probation deputy, which begins on page 7 of the Probation Office's memorandum of points and authorities in support of the motion to revoke probation and (2) exhibits 1, 2, 3, and 4 to that same declaration. (Rules Proc. of State Bar, rule 5.314(H).)

In its November 10, 2015, order in *Dickstein I*, the California Supreme Court placed respondent on one year's stayed suspension and two years' probation with conditions, including 30 days' actual suspension. The Supreme Court imposed that discipline, including each of the probation conditions, on respondent in accordance with the recommendation of the Review Department in its opinion issued on July 15, 2015, in State Bar Court case number 10-C-07932.

The California Supreme Court's November 10, 2015, order in *Dickstein I* became effective on December 10, 2015, and has continuously been in effect since that time. December 10, 2015, was also the "effective date of discipline" in *Dickstein I*. At all times material to the motion to revoke probation, respondent had actual knowledge of the Supreme Court's November 10, 2015, order in *Dickstein I*. (Cal. Rules of Court, rule 8.532(a); Evid. Code, § 664; *In re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

Probation Violations

Probation Deputy Meeting Condition

Respondent was required, within 30 days from the effective date of discipline, to contact the Probation Office and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation and to thereafter meet with the probation deputy as directed by the Probation Office. The record establishes, as charged, that respondent willfully violated this

condition by failing to contact the Probation Office to schedule a meeting with his probation deputy no later than January 9, 2016 (i.e., within 30 days after the December 10, 2015, effective date of discipline in *Dickstein I*). As of May 31, 2016, the date on which the Probation Office filed the present motion to revoke probation, respondent had still not contacted the Probation Office to set up a meeting with his probation deputy.

Probation Reporting Condition

Respondent was required to submit written, quarterly probation reports to the Probation Office on January 10, April 10, July 10, and October 10. The record establishes, as charged, that respondent willfully violated this condition by failing to submit his first probation report, which was due on April 10, 2016.

Aggravation

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

Respondent has one prior record of discipline: *Dickstein I*. *Dickstein I* was criminal conviction referral proceeding under sections 6101 and 6102 involving respondent's 2010 federal court misdemeanor conviction for contempt under title 18 United States Code section 401(3) and Federal Rules of Criminal Procedure, rule 42(a). Respondent's contempt conviction was based on respondent's violations of two court orders while respondent represented the two defendants in a criminal case in federal district court. Both of respondent's clients faced multiple serious and complex charges, including conspiracy to defraud the Internal Revenue Service by selling bogus tax avoidance schemes, and they both faced 25 years in prison and \$20 million in restitution. Respondent violated both of the federal district court orders when he sought to withdraw from representing the two defendants because of their failure to pay his fees. Respondent was sentenced to 90 days' confinement in the custody of the United States Marshal.

Respondent appealed his contempt conviction, but it was affirmed by the United States Court of Appeals for the Eleventh Circuit in 2011.

In *Dickstein I*, respondent's contempt conviction did not involve moral turpitude. However, the facts and circumstances surrounding respondent's commission of the crime involved other misconduct warranting discipline. In addition, respondent's misconduct was aggravated by his lack of insight and by the harm the misconduct caused to the administration of justice. Respondent's misconduct in *Dickstein I* was mitigated by his lack of a prior record in California in 30 years of practice. Respondent, however, was only given minimal mitigating credit for his 30 years of misconduct free practice because (1) respondent was censured by a federal district court for trial misconduct in 1987 and (2) respondent was effectively disbarred from a federal district court in 1996 when the federal court revoked respondent's pro hac vice admission because respondent made misrepresentations and omitted facts from his admission application.

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

Even after the Probation Office filed the present motion to revoke probation, respondent (1) failed to contact the Probation Office and schedule a meeting with his assigned probation deputy and (2) failed to file his first probation report. These failures establish respondent's indifference towards rectifying his misconduct, which is a very significant aggravating circumstance.

Intentional Misconduct (Std. 1.5(d).)

Even though the issue is not directly addressed in the motion to revoke probation, the court independently finds that respondent's failure to comply with the probation conditions imposed on him in *Dickstein I* were not merely willful, but were also intentional. The documentary evidence in this matter establishes the following facts. On November 19, 2015,

shortly after the Supreme Court filed its November 10, 2015, order in *Dickstein I*, respondent sent an email to his assigned probation deputy Michael Kanterakis (Kanterakis) asserting that California Rules of Court, rule 9.21 (resignations with disciplinary charges pending) was not applicable to him because his case (i.e., *Dickstein I*) is “over.” Attached to that email was an unsigned copy of a November 18, 2015, letter from respondent addressed to the Office of the Clerk of the State Bar Court, which respondent designated as his “Second Notice of Resignation from the State Bar of California.”⁴ The State Bar Court does not have a record of having received respondent's second notice of resignation or any other notice of resignation or resignation from respondent.

Later in the day, on November 19, 2015, Kanterakis sent respondent a reply email, informing respondent that he had forwarded respondent's November 19, 2015, email⁵ and confirming that respondent needed to submit a resignation with disciplinary charges pending that complied with rule 9.21.⁶ After a further brief exchange of emails with Kanterakis, respondent stated in the last email he sent to Kanterakis on November 24, 2015, in reference to his disciplinary probation in *Dickstein I*, that there would be “[n]o meetings, no compliance, no [sic]

⁴ According to this letter, respondent previously sent his “first NOTICE OF RESIGNATION to the State Bar in [sic] California, via certified mail ...” sometime after respondent stopped practicing law in January 2011.

⁵ Kanterakis did not indicate where or to whom he forwarded respondent's email.

⁶ Respondent is incorrect in his understanding of the applicability of rule 9.21 to his situation. Notably, Rules of the State Bar of California, rule 2.45 (rule 2.45) prohibits an attorney from filing a voluntary resignation (i.e., a resignation without disciplinary charges pending) if, inter alia, the attorney is on disciplinary suspension (rule 2.45(A)(1)(a)) or probation (rule 2.45(A)(1)(b)). Respondent remains on actual suspension under the Supreme Court's November 10, 2015, order in *Dickstein I* in which respondent was suspended for 30 days because respondent has not paid the disciplinary costs the Supreme Court also imposed on him in its November 10, 2015, order. (§ 6140.7.) Therefore, if respondent still desires to have the California Supreme Court consider his resignation, respondent must submit a resignation that complies with rule 9.21.

nothing” from him and closing: “I am 100% done with the State Bar of California, and what passes for law in the country today.”

Mitigation

Because respondent did not file a response to the motion to revoke probation, no evidence exists of any mitigating circumstances. Additionally, the court is not otherwise aware of any mitigating circumstances.

Discussion

Public protection and attorney rehabilitation are the primary goals of attorney disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.)

“[T]here has been a wide range of discipline imposed for probation violations from merely extending probation . . . to a revocation of the full amount of the stayed suspension and imposition of the amount as an actual suspension.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

In determining the appropriate level of discipline in a probation revocation proceeding, the court is to consider the “total length of stayed suspension which could be imposed as an actual suspension and the total amount of actual suspension earlier imposed as a condition of the discipline at the time probation was granted.” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) The court is to also consider the seriousness of the probation violations, the respondent’s recognition of his or her misconduct, and the respondent’s efforts to comply with the conditions of probation. (*Ibid.*)

An attorney has a professional duty to comply with all the terms and conditions of any disciplinary probation imposed by the Supreme Court. (§ 6068, subd. (k).) Thus, an attorney’s failure to comply with the conditions of his or her disciplinary probation “ ‘demonstrates a lapse of character and a disrespect for the legal system that directly relate to [the attorney’s] fitness to

practice law and serve as an officer of the court. [Citation.]’ [Citation.]” (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) This point is particularly apt here, due to respondent’s clearly stated intention, virtually from the date he first learned of the Supreme Court’s November 10, 2015, order in *Dickstein I* not to abide by the conditions of probation imposed upon him. Moreover, respondent’s present failure to comply with two of the conditions of his disciplinary probation clearly establishes that he has not undertaken the rehabilitative process. Moreover still, respondent’s failure to contact the Probation Office and schedule a meeting with his assigned probation deputy and his failure to file his first probation report after the Probation Office filed the present motion to revoke probation not only establish respondent’s indifference to rectification of his misconduct, but also establish respondent’s refusal to undertake the rehabilitative process and to conform his conduct to the strictures of the profession.

Based on respondent’s deliberate refusal to obey an order of the Supreme Court, the court believes only disbarment will adequately protect the profession, the courts, and the public. The court, however, lacks jurisdiction to recommend disbarment in this proceeding.⁷ The court will, therefore, recommend the greatest level of discipline within its jurisdiction, which is to recommend the imposition of the full period of the stayed suspension previously imposed on respondent in *Dickstein I*. (*In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 78.) The court further concludes, in light of respondent’s refusal to comply with his probation conditions, that it is appropriate to require that respondent establish his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.2(c)(1) before he may be relieved of the one-year actual suspension. (Cf. *ibid.*) Finally, the court concludes that public

⁷ The State Bar Court has jurisdiction to recommend disbarment for probation violations, but only in original disciplinary proceedings charging violations of section 6068, subdivision (k).

protection compels respondent's involuntary inactive enrollment under section 6007, subdivision (d)(1).

The court does not recommend that respondent be again ordered to take and pass a professional responsibility examination because he was ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) in the Supreme Court's November 10, 2015, order in *Dickstein I*. That portion of the Supreme Court's November 10, 2015, order will remain in effect even after respondent's probation is revoked in this proceeding. And, if respondent fails to take and pass the MPRE within the time prescribed in the Supreme Court's November 10, 2015, order (or as it may be modified by the State Bar Court), respondent will be suspended from the practice of law until he does. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

Discipline Recommendation

The court orders that the Office of Probation's May 31, 2016, motion to revoke probation is GRANTED. Accordingly, the court recommends that the two-year probation imposed on respondent **JEFFREY ALAN DICKSTEIN** in the Supreme Court's November 10, 2015, order in case number S228801 (State Bar Court case number 10-C-07932), be revoked; that the stay of execution of the one-year suspension imposed in that case be lifted; and that **JEFFREY ALAN DICKSTEIN** be (actually) suspended from the practice of law in the State of California for one year with credit given for the period of his involuntary inactive enrollment under this court's order of inactive enrollment *post* (Bus. & Prof. Code, § 6007, subd. (d)(3)) and until **JEFFREY ALAN DICKSTEIN** provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law in accordance with standard 1.2(c)(1) of the Standards for Attorney Sanctions for Professional misconduct.

Rule 9.20

The court further recommends that **JEFFREY ALAN DICKSTEIN** be ordered to comply with 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 calendar days, respectively, after the effective date of the Supreme Court order in this probation revocation proceeding.⁸

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.

IX. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The court orders that **JEFFREY ALAN DICKSTEIN** be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (d)(1), effective three days after service of this order by mail. Unless otherwise ordered, **JEFFREY ALAN DICKSTEIN'S** involuntary inactive enrollment under this order will terminate, without the necessity of further court order, on the earlier of the effective date of the Supreme Court order in this matter or one year after his inactive enrollment under this order. (Bus. & Prof. Code, § 6007, subd. (d)(2); Rules Proc. of State Bar, rule 5.315.)

Dated: July 26, 2016



W. KEARSE MCGILL
Judge of the State Bar Court

⁸ Respondent must file a rule 9.20(c) compliance affidavit/declaration even if he does not have any clients on the date the Supreme Court orders him to comply with rule 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) Furthermore, an attorney's failure to fully and timely comply with rule 9.20 is extremely serious misconduct for which disbarment is ordinarily the sanction ordered. (Cal. Rules of Court, rule 9.20(d); *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)

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 July 26, 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:

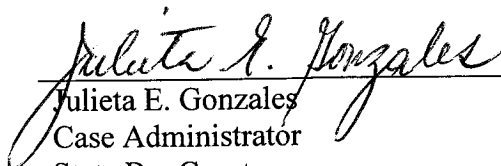
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JEFFREY ALAN DICKSTEIN
JEFFREY A. DICKSTEIN
3263 S ERIE AVE
TULSA, OK 74135

- 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 July 26, 2016.



Julieta E. Gonzales
Case Administrator
State Bar Court