FILED DECEMBER 2, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **CHARLES REGINALD WEAR,** **Member No. 102381,** A Member of the State Bar.	)))))))	Case No.: **13-PM-16064-DFM (S201892)** **ORDER GRANTING MOTION TO REVOKE PROBATION AND FOR INVOLUNTARY INACTIVE ENROLLMENT**

Introduction[1]

In this probation revocation proceeding, respondent **Charles Reginald Wear** (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 on Respondent the entire period of suspension previously stayed, and to enroll Respondent as an involuntary inactive member of the State Bar.

The court finds, by a preponderance of the evidence, that Respondent has violated his probation conditions. As a result, the court recommends, among other things, that Respondent's probation be revoked, that the previously-ordered stay of suspension be lifted, and that Respondent be suspended from the practice of law for one year, execution of that period of suspension be stayed, and that he be placed on probation for two years on conditions, including that he be suspended from the practice of law for the first year of probation.

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references or references to section(s) are to the Business and Professions Code, unless otherwise indicated.

Finally, the court orders that Respondent be enrolled as an involuntary inactive member of the State Bar pursuant to section 6007, subdivision (d)(1).

Significant Procedural History

On October 3, 2013, 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. Respondent did not file a response within 20 days of the service of the motion. The court then took this matter under submission on November 4, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on February 5, 1982, and has been a member of the State Bar of California at all times since that date.

On July 18, 2012, in Supreme Court case No. S201892, 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 two years, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation, filed March 6, 2012 (State Bar Court case No. 11-O-15087); and
2. Respondent must comply, among other things, with the following probation conditions:
   A. Within one year after the effective date of his discipline, Respondent was to provide the Office of Probation with satisfactory proof of attendance at a session of the State Bar Ethics School and passage of the test given at the end of that session; and

B. Within one year of the effective date of his discipline, Respondent was to provide the Office of Probation with satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School and passage of the test given at the end of that session.

The Supreme Court order became effective on August 17, 2012, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.[2]

On July 26, 2012, the Office of Probation wrote a letter to Respondent, properly sent to him at his then correct official address, reminding him of certain terms and conditions of his suspension and probation and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, the 2012 schedule of the State Bar's Ethics and Client Trust Accounting Schools, the State Bar's Ethics and Client Trust Accounting Schools' information sheets, and an Application Enrollment Form for the schools.

Respondent then met with his assigned probation deputy by phone on September 18, 2012. Respondent confirmed that he had received the probation officer's July 26, 2012 letter. The probation deputy reviewed with Respondent all of his probation conditions and their deadlines, including the deadlines for presenting proof of passage of the Ethics and Client Trust Accounting Schools.

Respondent subsequently failed to provide the Office of Probation with any proof that he had either attended or passed either the State Bar's Ethics School or its Client Trust Accounting School by the deadline for doing so.

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[2] Although 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 August 19, 2013, the Office of Probation mailed and emailed to Respondent a letter informing him, inter alia, that he had not provided proof of attendance at the Ethics and Client Trust Accounting Schools by the deadline for doing so. The letter enclosed a complete copy of the reminder letter that had been mailed to him on July 26, 2012. At the time that the instant motion to revoke Respondent's probation was filed on October 3, 2013, Respondent had still not provided such proof to the Office of Probation. After the motion was filed, he then made no effort to oppose it.

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 in S201892: (1) Respondent has failed to provide the Office of Probation with satisfactory proof of attendance at a session of the State Bar's Ethics School and passage of the test given at the end of that session; and (2) Respondent has failed to provide the Office of Probation with satisfactory proof of attendance at a session of the State Bar's Client Trust Accounting School and passage of the test given at the end of that session.

As a result, the revocation of Respondent's probation in California Supreme Court order No. S201892 is warranted.

Aggravation

Prior Record of Discipline (Std. 1.2(b)(i).)

Respondent has two prior records of discipline. [3]

In Respondent's first prior record of discipline, the case giving rise to the probation subject to the pending motion, Respondent stipulated to culpability in a single client matter for: (1) failing to return unearned fees; (2) failing to promptly pay out client funds at the client's direction and request; and (3) failing to cooperate with a State Bar investigation. As previously noted, Respondent was ordered suspended for one year, stayed, and placed on probation for two years, effective August 17, 2012. (Supreme Court case No. S201892; State Bar Court case No. 11-O-15087.)

In Respondent's second record of discipline, effective September 27, 2013, Respondent stipulated to culpability in a single client matter for: (1) failing to competently perform legal services; (2) improperly withdrawing from legal services upon termination of employment; (3) failing to keep a client reasonably informed of significant developments; and (4) failing to cooperate with the State Bar regarding a disciplinary investigation. Respondent was ordered suspended for two years, stayed, placed on probation for three years, and actually suspended from the practice of law for one year. (Supreme Court case No. S211554; State Bar Court case No. 12-O-12506.)

This prior record of discipline is an aggravating factor.

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[3] The court takes judicial notice of the certified copy of Respondent's first prior record of discipline, which is attached to the Office of Probation's motion. Additionally, because the Office of Probation failed to include a certified copy of Respondent's second prior record of discipline, the court takes judicial notice of the pertinent State Bar Court records regarding that prior discipline (Supreme Court case No. 211544; State Bar Court case No. 12-O-12506), admits those records into evidence, and directs the Clerk to include copies in the record of this case.

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

As noted above, Respondent committed multiple acts of wrongdoing.

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)

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.) Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying, despite numerous reminders from the Office of Probation.

Mitigation

Because 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. 1.2(e).)

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 and 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.) However, any actual suspension cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rules Proc. of State Bar, rule 5.312.)

It is clear that Respondent remains indifferent to operating "within the lines" of his professional obligations, especially those arising from his obligations to the State Bar and its consumer protection functions. Under such circumstances, the court concludes that his original probation should be revoked and the one-year suspension, previously stayed, should now be

imposed. (*Potack v. State Bar* (1991) 54 Cal.3d 132; *Barnum v. State Bar* (1990) 52 Cal.3d 104, 107.)

Recommendation

The court recommends that the probation of respondent **Charles Reginald Wear**, Member No. 102381, imposed in Supreme Court case No. S201892 (State Bar Court case No. 11-O-15087) be revoked; that the previous stay of execution of the suspension be lifted; and that that Respondent be suspended from the practice of law for one year; that execution of such suspension be stayed; and that Respondent be placed on probation for two years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first one year of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
3. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current office address and telephone number or, *if no office is maintained,* an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

4. Within thirty (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 and 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.

5. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Respondent is on probation (reporting dates).[4] However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

   (a) in the first report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

   (b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to

[4] To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

6. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.

7. Within **six months** after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete both the State Bar's Ethics School and its Client Trust Accounting School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing these courses. (Rules Proc. of State Bar, rule 3201.)

8. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

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. S201892.

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.[5]

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment and Further Recommendation

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 in the instant matter.

Therefore, it is hereby ORDERED that respondent **Charles Reginald Wear**, Member No. 102381, be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order. It is also ordered that Respondent's inactive enrollment be terminated in the future as provided by Business and Professions Code section 6007, subdivision (d)(2).

Finally, it is RECOMMENDED that that any period of involuntary inactive enrollment

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[5] 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.)

under section 6007, subdivision (d), be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

Dated: December _____, 2013

DONALD F. MILES
Judge of the State Bar Court