

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 14-PM-01591-LMA (S208973)
)	
JAMES LYNN BAUCHERT,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND FOR
Member No. 170174,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction¹

In this probation revocation proceeding, respondent James Lynn Bauchert, 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, one-year suspension be lifted, and that he be actually suspended for one year and until he makes restitution. If he remains suspended for two years or more, respondent must also provide proof

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.

to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the 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 March 19, 2014, the Office of Probation filed and properly served a motion to revoke probation² 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 took this matter under submission on April 15, 2014.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 2, 1994, and has been a member of the State Bar of California at all times since that date.

Facts

On May 8, 2013, in Supreme Court case No. S208973, 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, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed January 16, 2013 (State Bar Court case Nos. 12-O-13324 et al.); and
2. Respondent comply, among other things, with the following probation conditions:
 - A. During the period of probation, respondent was required to submit a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each

² The court takes judicial notice of the certified copy of respondent's prior record of discipline attached to the motion.

year, or part thereof, during which the probation is in effect, stating under penalty of perjury that he has complied with provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report); and

- B. Within six months from the effective date of discipline (by December 7, 2013), respondent was to make restitution to Mariela Miotto and Dr. Eduardo D. Lam (jointly), or the Client Security Fund if it has paid, in the amount of \$5,000 plus interest at the rate of 10% per year from August 1, 2012, and furnish satisfactory evidence of restitution to the Office of Probation. The Supreme Court order became effective on June 7, 2013, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.³

On June 12, 2013, the Office of Probation wrote a letter to respondent, properly sent to him at his official address, reminding him of certain terms and conditions of his suspension and the probation imposed pursuant to 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 or forms to use in submitting quarterly reports.

The letter was not returned as undeliverable.

Deputy Maricruz Farfan of the Office of Probation conducted the required meeting with respondent on July 30, 2013. The probation deputy reviewed with him all of his probation conditions and their deadlines.

³Although 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.

Respondent has failed to file his first two quarterly reports due October 10, 2013, and January 10, 2014. In addition, he has not provided any proof of restitution.

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 conditions of probation, as ordered by the Supreme Court in S208973: (1) respondent has failed to file his first two quarterly reports due October 10, 2013, and January 10, 2014; and (2) respondent has failed to provide the Office of Probation with any proof of restitution.

As a result, the revocation of respondent's probation in California Supreme Court order No. S208973 is warranted.

Aggravation⁴

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

Respondent has one prior record of discipline.

In the underlying matter, respondent stipulated to culpability in two client matters for failing to perform services, failing to promptly refund unearned fees, failing to return client files, and failing to cooperate with the State Bar. He was ordered suspended for one year, stayed, and

⁴ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

placed on probation for one year. (Supreme Court case No. S208973, effective June 7, 2013; State Bar Court case Nos. 12-O-13324 et al.)

Multiple Acts (Std. 1.5(b).)

Respondent committed multiple acts of wrongdoing, including failing to file his first two quarterly reports and failing to provide proof of restitution.

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

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.) Although the motion to revoke his probation was filed in March 2014, which put respondent on notice that his probation status was in jeopardy, respondent still failed to file the quarterly reports or provide proof of restitution to the Office of Probation.

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.5(h).)

Respondent's failure to participate in this proceeding is also an aggravating factor.

Mitigation

Since 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. 1.6.)

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 (1) until he makes restitution to Mariela Miotto and Dr. Eduardo D. Lam in the amount of \$5,000, plus interest (*In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 687); and (2) until he complies with standard 1.2(c)(1), if the actual suspension exceeds two years. (*In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737.) The court agrees.

Recommendations

The court recommends that the probation of respondent James Lynn Bauchert, member No. 170174, imposed in Supreme Court case No. S208973 (State Bar Court case Nos. 12-O-13324 et al.) 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 one year and he will remain suspended until the following requirements are satisfied:

1. Respondent makes restitution to Mariela Miotto and Dr. Eduardo D. Lam (jointly) in the amount of \$5,000 plus 10 percent interest per year from August 1, 2012 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Mariela Miotto and Dr. Eduardo D. Lam, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
2. If he remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the 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).)

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. S208973.

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 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.

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.)

Respondent is ordered to be involuntarily enrolled inactive under section 6007, subdivision (d)(1).⁶ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: May _____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court

⁶The 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).)