

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

|                                   |   |                                  |
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| In the Matter of                  | ) | Case No.: <b>15-PM-10969-LMA</b> |
|                                   | ) |                                  |
| <b>ZACHARY ALEXANDER TORAN,</b>   | ) | <b>ORDER GRANTING MOTION TO</b>  |
|                                   | ) | <b>REVOKE PROBATION AND FOR</b>  |
| <b>Member No. 267822,</b>         | ) | <b>INVOLUNTARY INACTIVE</b>      |
|                                   | ) | <b>ENROLLMENT</b>                |
| <u>A Member of the State Bar.</u> | ) |                                  |

**INTRODUCTION**

On March 4, 2015, the State Bar Office of Probation, represented by Terrie Goldade, filed a motion pursuant to Business and Professions Code sections 6093<sup>1</sup> and rules 5.310 et seq. of the Rules of Procedure of the State Bar<sup>2</sup> to revoke the probation of respondent Zachary Alexander Toran. The motion had been properly served on respondent at his State Bar membership records address on March 3, 2015. Respondent did not file a written response to the motion.

For the reasons stated below, the court finds, by a preponderance of the evidence, that respondent willfully failed to comply with the terms of his probation. (Section 6093, subd. (c).) As a result, the court grants the motion of the Office of Probation to revoke respondent's probation and its request to involuntarily enroll him as an inactive member of the State Bar pursuant to section 6007, subdivision (d). The court recommends that respondent's probation be

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<sup>1</sup>Future references to section(s) are to this source.

<sup>2</sup>Future references to rule(s) are to this source.

revoked; that the previously-ordered stay of suspension be lifted; and that he be actually suspended for three years and until he complies with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1).<sup>3</sup>

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Jurisdiction**

Respondent was admitted to the practice of law in California on December 4, 2009, and has been a member of the State Bar at all times since.

### **Probation Violations**

On May 2, 2013, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case no. 11-C-17711 and recommending discipline including a three-year stayed suspension and three years' probation on conditions including six months' actual suspension.

On September 19, 2013, the California Supreme Court filed an order, S211926, accepting the State Bar Court's discipline recommendation and ordering respondent to comply, among other things, with the following conditions of probation:

(a) Submit a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year, or part thereof, during which the probation is in effect, stating under penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report);

(b) Comply with all conditions of his criminal probation and so declare under penalty of perjury in each quarterly report required to be filed (criminal probation compliance report); and

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<sup>3</sup> All further references to standard(s) or std. are to this source.

(c) Within one (1) year of the effective date of the discipline, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of each session.

The Supreme Court order became effective thirty days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.

On October 2, 2013, the Office of Probation wrote a letter to respondent, reminding him of the terms and conditions of his suspension and of 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, instruction sheets and forms to use in submitting quarterly reports, and a schedule of the dates that the State Bar Ethics School would be conducted. Another letter was sent to respondent on July 16, 2014, setting forth his compliance and noncompliance with probation conditions to date and to which was attached a copy of the October 2, 2013, letter.

The Office of Probation alleges in its motion to revoke respondent's probation that he willfully violated all of the conditions of probation summarized above. The court finds the following with respect to those claimed violations.

**Failure to Submit Quarterly and Criminal Probation Compliance Reports**

The State Bar contends that respondent failed to submit on a timely basis the quarterly and criminal probation compliance reports due on July 10, 2014. The reports respondent mailed by Federal Express on July 9 and received by the Office of Probation on July 10, 2014 did not indicate the time period covered by the reports. After being advised on July 14, 2014, by the Office of Probation of this error, he mailed corrected, compliant versions on July 15, 2014. Respondent did not disregard these probation conditions. He made a simple error which does not rise to the level of a willful violation of probation conditions.

### **Failure to Take the State Bar Ethics and CTA Schools**

The Office of Probation alleges that respondent failed to take the State Bar Ethics School before the deadline imposed by the Supreme Court order, namely October 19, 2014. Having received no evidence to the contrary, the court finds that respondent willfully violated that probation conditions.

### **Aggravating Circumstances**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).) The court finds the following with regard to aggravating factors.

#### **Prior Discipline**

In aggravation, respondent has one prior record of discipline. (Std. 1.2(b)(i).) As noted above, respondent has a prior record of discipline consisting of the underlying disciplinary proceeding, State Bar Court case no 11-C-17711. In that proceeding, respondent was found culpable of misconduct involving a misdemeanor violation of Penal Code section 415(2) (disturbing the peace). No aggravating circumstances were found. Mitigating factors were good faith; remorse; and community service.

Respondent received, among other things, a three-year stayed suspension and three years of probation on conditions including six months' actual suspension.

#### **Indifference**

Respondent's failure to comply with the probation conditions, after being reminded by the Office of Probation, demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

### **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence, but did not introduce such evidence. (Std. 1.2(e).) Accordingly, the court does not find mitigating factors.

### **DISCUSSION**

Section 6093 authorizes the revocation of probation for a violation of a probation condition. Standard 1.7 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding. 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.)

Respondent did not offer evidence explaining noncompliance with the foregoing probation condition or request a hearing in this matter. The court concludes that his original probation should be revoked and the three-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; *In the Matter of Potack, supra.*)

### **RECOMMENDED DISCIPLINE**

#### **Probation Revocation/Actual Suspension**

For all of the above reasons, the court recommends that the probation of respondent Zachary Alexander Toran, member no. 267822, previously ordered in Supreme Court matter S211926 (State Bar Court case no. 11-C-17711), be revoked; that the previous stay of execution of the suspension be lifted; that respondent be suspended from the practice of law for three years and until he provides satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his actual suspension will be

terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

### **California Rules of Court, Rule 9.20**

The court recommends that respondent be ordered to comply with rule 9.20 of the California Rules of Court, and 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 matter.<sup>4</sup>

### **MPRE**

Because respondent was ordered by the Supreme Court to take and pass the MPRE in its order of September 19, 2013, the court does not recommend that respondent be further ordered in this matter to take and pass that examination.

### **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 REGARDING INACTIVE ENROLLMENT**

It is hereby ORDERED that respondent Zachary Alexander Toran, Member No. 267822, 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. The requirements of section 6007, subdivision (d)(1) have been met: respondent was subject to a stayed suspension, was found to have violated

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<sup>4</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, among other things, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

probation conditions, and it has been recommended that respondent be actually suspended due to said violations.

Finally, it is recommended that respondent's actual suspension in this matter commence as of the date of his inactive enrollment pursuant to this order. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

Dated: April \_\_\_\_\_, 2015

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LUCY M. ARMENDARIZ  
Judge of the State Bar Court