

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 14-PM-03059-LMA
)	
CHRISTOPHER JOHN van SON,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND FOR
Member No. 133440)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction

The present matter is before the court on remand from the Review Department of the State Bar Court. Good cause having been shown, the motion to revoke respondent’s probation is granted and discipline is recommended as set forth below.

Significant Procedural History

On May 28, 2014, the Office of Probation of the State Bar of California (Office of Probation) filed a motion to revoke the probation of respondent Christopher John van Son (motion to revoke). Although he was properly served with the motion to revoke probation by certified mail, return receipt requested, and by regular mail at his State Bar membership records address, respondent did not properly file a response to the motion to revoke. On July 9, 2014, this court issued an order granting the motion to revoke and ordering respondent’s inactive enrollment.

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On August 4, 2014, respondent filed a motion to set aside the July 9, 2014 order and requested consolidation with his other disciplinary cases.¹ The Office of Probation opposed respondent's motion. On September 5, 2014, the hearing judge, on the court's own motion, vacated the July 9, 2014 order, denied respondent's motion to set aside and request to consolidate, and referred the pending matter to the Alternative Discipline Program (ADP).

On September 15, 2014, respondent filed his response to the motion to revoke. That same day, the Office of Probation filed a motion to stay respondent's evaluation for ADP and a motion for reconsideration of the September 5, 2014 order. Respondent filed an opposition to the Office of Probation's motions. On October 3, 2014, the hearing judge granted the Office of Probation's motion to stay respondent's evaluation for ADP. On October 14, 2014, he denied the Office of Probation's motion for reconsideration.

On October 28, 2014, the Office of Probation filed a petition for interlocutory review of the hearing judge's order vacating the probation revocation order and referring the matter to ADP. Respondent did not file a response to this petition. On January 2, 2015, the review department filed an order granting the petition and remanding the matter back to the hearing department. This order specifically stated that this court "should rule upon the [motion to revoke] with consideration of respondent's response under the expedited procedures applicable to probation revocation proceedings."

Findings of Fact and Conclusions of Law

On October 17, 2012, the California Supreme Court filed an order, S204058, accepting the State Bar Court's discipline recommendation in case nos. 11-O-15166, et al., in which respondent stipulated to misconduct in fourteen client matters, including failing to perform legal

¹ In this motion, respondent asserted that he served the Office of Probation with a response to the motion to revoke, but mistakenly failed to file a copy of his response with the court.

services with competence, improper withdrawal, charging and accepting advanced loan modification fees, improperly holding himself out as able to practice law in other states, and charging illegal fees. The discipline included a two-year stayed suspension with three years' probation, including an actual suspension of eighteen months and until respondent provides satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. This order was properly served on respondent and became effective on November 16, 2012.² In addition, a copy of the stipulation and this court's order approving the same had previously been properly served on respondent's attorney on June 1, 2012.

On October 25, 2012, the Office of Probation sent respondent a reminder letter regarding the probation conditions at his official address. This letter was not returned as undeliverable or for any other reason.

On December 4, 2012, respondent and his probation deputy communicated in person regarding the terms and conditions of his disciplinary probation. That same day, respondent's probation deputy sent him a letter providing contact information for respondent's restitution payees. On January 14, 2013, respondent's probation deputy sent him a letter informing respondent that his January 10, 2013 quarterly report was filed one day late. In this letter, respondent's probation deputy requested that he timely submit future quarterly reports.

Despite these efforts to make respondent aware of the conditions of his probation and to secure his compliance with them, respondent did not timely comply with the following probation conditions:

(a) During the period of probation, respondent was required to submit written quarterly reports to the Office of Probation on January 10, April 10, July 10, and October 10 of each year,

² In the absence of evidence to the contrary, the court finds that the Clerk of the Supreme Court performed his or her duty by transmitting a copy of the Supreme Court's order to respondent immediately after its filing. (Rule 8.532(a), Cal. Rules of Court; Evid. C. §664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

or part thereof during which the probation was in effect, stating under penalty of perjury that he had complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period. Respondent did not timely file his quarterly reports due January 10, 2013; April 10, 2013; and April 10, 2014. Respondent subsequently filed each of these reports late on January 11, 2013 (one day late); April 29, 2013 (nineteen days late); and May 2, 2014 (twenty-two days late).

(b) Respondent was ordered to provide the Office of Probation satisfactory proof of attendance at Ethics School and passage of the test given at the end of that session within one year of the effective date of his discipline – by November 16, 2013. Respondent, however, failed to provide the Office of Probation timely proof that he attended Ethics School and passed the test given at the end of that session.

On June 19, 2014, respondent belatedly completed Ethics School and passed the test given at the end of that session. Respondent's belated compliance was approximately seven months late, and occurred after the filing of the motion to revoke.

(c) Respondent was ordered to provide the Office of Probation satisfactory proof of attendance at Client Trust Accounting School and passage of the test given at the end of that session within one year of the effective date of his discipline – by November 16, 2013. Respondent, however, failed to provide the Office of Probation proof that he attended Client Trust Accounting School and passed the test given at the end of that session.

On June 20, 2014, respondent belatedly completed Client Trust Accounting School and passed the test given at the end of that session. Respondent's belated compliance was approximately seven months late, and occurred after the filing of the motion to revoke.

(d) Respondent was ordered to provide the Office of Probation satisfactory proof of completion of no less than six hours of Minimum Continuing Legal Education (MCLE)

approved courses in law office management, attorney client relations, and/or general legal ethics within six months of the effective date of his discipline – by May 16, 2013. Respondent, however, failed to provide such proof to the Office of Probation.

In July 2014, respondent belatedly completed his MCLE approved courses in law office management, attorney client relations, and/or general legal ethics. Respondent's belated compliance was approximately fourteen months late, and occurred after the filing of the motion to revoke.

Aggravation

Prior Discipline

Respondent's prior record of discipline is a factor in aggravation. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,³ std. 1.5(a).) Respondent has one prior imposition of discipline.

In the underlying matter, the Supreme Court, on October 17, 2012, filed an order in case no. S204058 (State Bar Court case nos. 11-O-15166, et al.) suspending respondent from the practice of law for two years, staying execution of the suspension, and placing him on probation for three years, including an actual suspension of eighteen months and until respondent provides satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. In this matter, respondent stipulated to misconduct in 14 client matters, including failing to perform legal services with competence, improper withdrawal, charging and accepting advanced loan modification fees, improperly holding himself out as able to practice law in other states, and charging illegal fees. In mitigation, respondent demonstrated remorse, was candid and cooperated with the State Bar, and had no prior record of discipline. In

³ Future references to standard or std. are to this source.

aggravation, respondent committed multiple acts of misconduct and caused significant harm to his clients.

Multiple Acts of Misconduct

Respondent's violations of the terms of his disciplinary probation constitute multiple acts of misconduct. (Std. 1.5(b).)

Mitigation

Belated Compliance with Probation Conditions

Respondent belatedly complied with each of the aforementioned probation conditions. Respondent's late filing of his quarterly reports occurred prior to the Office of Probation's motion to revoke; however, he did not belatedly comply with the other aforementioned requirements of probation until after the filing of the motion to revoke. Consequently, respondent's efforts to belatedly comply with the conditions of his disciplinary probation warrant limited consideration in mitigation. (*In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 646, 652 [belated compliance with probation condition may be mitigating factor for discipline].)

Extreme Emotional Difficulties

Respondent asserted that he was experiencing extreme emotional difficulties at the time of the misconduct. (Std. 1.6(d).) This assertion, however, was not supported by expert testimony or any other credible corroboration.⁴ Accordingly, the court does not assign this factor any weight in mitigation.

⁴ While respondent noted that he is now in ADP, the court cannot presume from this fact that he was experiencing extreme emotional difficulties at the time of the misconduct and that his emotional difficulties were directly responsible for the misconduct.

Discussion

Public protection and attorney rehabilitation are the primary goals of 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 that amount as an actual suspension.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.) Absent compelling mitigating circumstances, an attorney who willfully violates a significant condition of probation can anticipate actual suspension as the expected result. (*In the Matter of Gorman, supra*, 4 Cal. State Bar Ct. Rptr. at p. 574.)

In determining the level of discipline to be imposed, the court must consider the “total length 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 extent of the discipline to be recommended is dependent, in part, on the nature of the probation violation and its relationship to respondent’s prior misconduct. (*Ibid.*)

In light of respondent’s prior record of discipline, the court also considers standard 1.8(a). Standard 1.8(a) provides that if an attorney has a single prior record of discipline “the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time *and* the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.” (Emphasis added.) Here, respondent’s prior discipline was serious and not remote in time.

The Office of Probation contends that respondent’s probation should be revoked, with the court imposing the entire two-year suspension period. The Office of Probation further asserted

that respondent should remain on actual suspension until he makes restitution and complies with standard 1.2(c)(1). Respondent, on the other hand, argues that his compliance with his probation conditions was “delayed” due to financial hardship and emotional difficulties. Respondent asserts that his probation should not be revoked.

The court finds guidance in *Potack v. State Bar* (1991) 54 Cal.3d 132. In *Potack*, the attorney received a two-year actual suspension based on his failure to correct a defective probation report he filed late, despite abundant opportunity to do so. The attorney’s default was entered by the hearing department and his subsequent motion to set it aside was denied. The attorney had one prior record of discipline resulting in a one-year actual suspension and the underlying probation conditions. The Supreme Court rejected the argument that the two-year suspension was excessive, finding that although the attorney attempted to “minimize his probation violation and subsequent misconduct with respect to the default proceedings, his failure to abide by the terms and conditions of his probation is a serious violation.” (*Id.* at p. 139.)

The present case is similar to *Potack*. Respondent, like the attorney in *Potack*, committed serious misconduct in his prior discipline – resulting in a lengthy period of actual suspension. While it did not proceed by default, the present matter involved more extensive probation violations than *Potack*. Accordingly, the court concludes that the present matter warrants discipline similar to that ordered in *Potack*.

As noted above, the misconduct in respondent’s prior discipline was both extensive and serious. In that matter, respondent was so derelict in his duties that the superior court was forced to intervene by assuming jurisdiction of his practice. Respondent’s present failure to comply with multiple probation requirements reflects his continued inability to satisfactorily conform to his ethical responsibilities.

Probation obligations are designed to rehabilitate the attorney and to protect the public from similar future misconduct. (See *Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1044.) Although he belatedly complied, respondent is not at leisure to unilaterally change the parameters of his probation. Further, much of respondent's belated compliance occurred after the Office of Probation had already filed its motion to revoke. Having thoroughly considered this matter, the court concludes that actual suspension for a minimum of two years and until satisfactory proof of payment of restitution and rehabilitation, fitness to practice, and learning and ability in the general law is both required and sufficient to protect the public in this instance.

Recommended Discipline

Accordingly, the court recommends as follows:

1. That the probation of respondent **Christopher John van Son** previously ordered in Supreme Court case no. S204058 (State Bar Court case nos. 11-O-15166, et al.) be revoked;
2. That the previous stay of execution of the suspension be lifted; and
3. That respondent be actually suspended from the practice of law for a minimum of two years, and he will remain suspended until the following requirements are satisfied:
 - i. He makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:
 - (1) Daniel Belcher in the amount of \$1,650 plus 10 percent interest per year from July 27, 2011;
 - (2) Richard Nerserian in the amount of \$1,650 plus 10 percent interest per year from August 9, 2011;
 - (3) Charity and Francisco Gonzales in the amount of \$947.50 plus 10 percent interest per year from January 31, 2010;
 - (4) Therese Austin in the amount of \$1,610 plus 10 percent interest per year from March 9, 2011;
 - (5) Kenneth Preston in the amount of \$5,000 plus 10 percent interest per year from June 3, 2011;

- (6) John Burkin in the amount of \$1,500 plus 10 percent interest per year from August 9, 2011;
- (7) Leticia and Orlando Bastides in the amount of \$5,000 plus 10 percent interest per year from July 13, 2011;
- (8) Joseph Carlos in the amount of \$4,994 plus 10 percent interest per year from July 10, 2011;
- (9) Dean and Shareece Kowal in the amount of \$1,650 plus 10 percent interest per year from July 25, 2011;
- (10) Steve Merino in the amount of \$5,000 plus 10 percent interest per year from April 1, 2011;
- (11) Dania Kreiger in the amount of \$4,300 plus 10 percent interest per year from August 11, 2011;
- (12) Darlene Mulvanity in the amount of \$2,500 plus 10 percent interest per year from June 3, 2011;
- (13) Maria Pavlova in the amount of \$5,000 plus 10 percent interest per year from August 4, 2011; and
- (14) Vennie Forks in the amount of \$5,000 plus 10 percent interest per year from June 15, 2011.

ii. He provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, std. 1.2(c)(i).)

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.

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination as he was previously ordered to do so in the underlying matter, Supreme Court case no. S204058.

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

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).⁵ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: February _____, 2015

LUCY ARMENDARIZ
Judge of the State Bar Court

⁵Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)