

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case No.: **14-PM-06186-PEM (S203069)**  
)  
**SCOTT ANTHONY GALLAND,** ) **ORDER GRANTING MOTION TO**  
) **REVOKE PROBATION AND FOR**  
) **INVOLUNTARY INACTIVE**  
) **ENROLLMENT**  
)  
A Member of the State Bar. )

**Introduction**<sup>1</sup>

In this probation revocation proceeding, respondent Scott Anthony Galland 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, two-year suspension be lifted, and that he be actually suspended for two years and until he makes restitution and provide proof to the State Bar Court of his rehabilitation, fitness to practice and

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<sup>1</sup> 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.

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 December 9, 2014, the Office of Probation filed and properly served a motion to revoke probation<sup>2</sup> 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.

At the January 16, 2015 status conference, respondent did not oppose the State Bar's motion.<sup>3</sup> The court took this matter under submission on January 16, 2015.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 7, 2000, and has been a member of the State Bar of California at all times since that date.

#### **Facts**

On August 16, 2012, in Supreme Court case No. S203069, the California Supreme Court ordered, among other things, that:

1. Respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, that he be placed on probation for three years, and that he be actually suspended for one year, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed April 12, 2012 (State Bar Court case Nos. 11-O-12629 et al.); and
2. Respondent comply, among other things, with the following probation conditions:

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<sup>2</sup> The court takes judicial notice of the certified copy of respondent's second prior record of discipline attached to the motion (case Nos. 11-O-12629 et al.). The court also takes judicial notice of the certified copy of respondent's first prior record of discipline (case No. 09-O-18616), as requested by the Office of Probation on January 2, 2015.

<sup>3</sup> On December 16, 2014, respondent filed a motion to modify his probation conditions in the underlying matter (case Nos. 11-O-12629 et al.). The court denied it on January 21, 2015.

- A. Within one year of the effective date of the discipline (by September 15, 2013), 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 the session; and
- B. Respondent must pay restitution to the following individuals of the amount set forth below, plus 10% interest per annum, accruing from the date specified below, and provide satisfactory proof thereof to the Office of Probation:

<u>Payee</u>	<u>Principal Amount</u>	<u>Interest Accrual Date</u>
Vicki Lomax	\$2,200	July 11, 2011
Brett Voris	\$5,000	January 12, 2010
Herbert Robinson	\$3,830	February 7, 2012

If the State Bar's Client Security Fund (CSF) has reimbursed any of the above individuals for all or any portion of the principal amounts, respondent must also pay restitution to the CSF of the amount paid, plus applicable interest and costs. To the extent the CSF had paid only principal amounts, respondent would still be liable for interest payments to said individuals.

Respondent was to pay restitution at the rate of \$75 per month to each payee, commencing 30 days from the effective date of the Supreme Court order.

Thereafter, monthly restitution would increase in accordance to the stipulation.

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or period. If he failed to pay any installment, the remaining balance is due and payable immediately.

The Supreme Court order became effective on September 15, 2012, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.<sup>4</sup>

On August 30, 2012, the Office of Probation sent a letter to respondent at his official membership address, reminding him of the terms and conditions of the suspension and probation imposed by 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 and forms to use in submitting quarterly reports. The letter was not returned as undeliverable.

Respondent was ordered to attend the State Bar Ethics School and provide proof of attendance by September 15, 2013. He did not attend Ethics School until February 20, 2014, and did not provide proof of completion until April 10, 2014.

In addition, respondent has failed to make any restitution installment payment in any amount to any payee.

### **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.)

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<sup>4</sup>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.

Respondent did not comply with the conditions of probation, as ordered by the Supreme Court in S203069: (1) Respondent failed to attend the Ethics School and provide proof to Office of Probation by September 15, 2013; 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. S203069 is warranted.

### **Aggravation<sup>5</sup>**

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

Respondent has three prior records of discipline, two of which are admitted as aggravating factors. The third prior record of discipline is not considered as aggravation since the State Bar did not present it into evidence.

In 2011, respondent was publicly reprovved for failing to perform services competently, failing to communicate with client, and failing to refund unearned fees in one client matter. (State Bar Court case No. 09-O-18616, effective April 19, 2011.)

In the underlying matter, respondent stipulated to culpability involving four client matters and a reprovval condition violation matter. His multiple acts of misconduct included failing to perform services competently, failing to take reasonable steps to avoid foreseeable prejudice to client upon termination of employment, failing to communicate with client, failing to refund unearned fees, failing to cooperate with the State Bar, failing to obey court order, failing to report court sanctions, failing to render an accounting, failing to return client file, and failing to comply with the conditions attached to his public reprovval. He was ordered suspended for two years, stayed, placed on probation for three years, and actually suspended for one year.

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<sup>5</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

(Supreme Court case No. S203069, effective September 15, 2012; State Bar Court case Nos. 11-O-12629 et al.)

Respondent has a third prior record of discipline, which is pending before the Supreme Court and whose recommended discipline has not yet been approved. (See Rules Proc. of State Bar, rule 5.106.) However, because the State Bar did not submit the record into evidence, respondent's third prior record of discipline is not considered as an aggravating factor. (State Bar Court case No. 12-H-15804, filed October 31, 2014.)

**Multiple Acts (Std. 1.5(b).)**

Respondent committed multiple acts of wrongdoing, including failing to make installment payments to three payees and failing to timely attend the State Bar's Ethics School.

**Mitigation**

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 Vicki Lomax in the amount of \$2,200, Brett Voris in the amount of \$5,000, and Herbert Robinson in the amount of \$3,830, plus interests, and furnish satisfactory evidence of restitution to the Office of Probation; and (2) until he complies with standard 1.2(c)(1). The court agrees.

### **Recommendations**

The court recommends that the probation of respondent Scott Anthony Galland, member No. 211220, imposed in Supreme Court case No. S203069 (State Bar Court case Nos. 11-O-12629 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 a minimum of two years and he will remain suspended until the following requirements are satisfied:

1. Respondent makes restitution to the following payees and furnishes satisfactory proof of such restitution to the State Bar's Office of Probation in Los Angeles:
  - a. Vicki Lomax in the amount of \$2,200 plus 10 percent interest per year from July 11, 2011;
  - b. Brett Voris in the amount of \$5,000 plus 10 percent interest per year from January 12, 2010; and
  - c. Herbert Robinson in the amount of \$3,830 plus 10 percent interest per year from February 7, 2012.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

2. Respondent 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 recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination during the period of his suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

**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.<sup>6</sup>

**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.

Respondent is ordered to be involuntarily enrolled inactive under section 6007, subdivision (d)(1).<sup>7</sup> This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: February \_\_\_\_\_, 2015

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PAT McELROY  
Judge of the State Bar Court

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<sup>6</sup> 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.)

<sup>7</sup>The 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).)

