

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No. 17-PM-04226-LMA
EARLE ARTHUR PARTINGTON,	)	ORDER GRANTING MOTION TO
A Member of the State Bar, No. 45731.	)	REVOKE PROBATION AND ORDER
_____	)	OF INVOLUNTARY INACTIVE
	)	ENROLLMENT

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

In this probation revocation proceeding, respondent Earle Arthur Partington (Respondent) is charged with violating certain probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (Office of Probation) seeks to (1) revoke his probation; (2) impose upon Respondent the entire period of suspension previously stayed; (3) require Respondent to comply with California Rules of Court, rule 9.20; and (4) involuntarily enroll Respondent as an inactive member of the State Bar pursuant to section 6007, subdivision (d).

The court finds, by a preponderance of the evidence, that Respondent has violated certain probation conditions and hereby grants the Office of Probation's motion. Therefore, the court orders that Respondent be involuntarily enrolled as an inactive member of the State Bar. The

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Business and Professions Code. All references to standard(s) or std. are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.



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 that he remain suspended until he provides 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 that session.

### **Significant Procedural History**

On July 21, 2017, the Office of Probation filed and properly served a motion to revoke probation on Respondent by certified mail and regular mail.<sup>2</sup> Respondent did not file a response to the motion.

The court took this matter under submission for decision on August 22, 2017.

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

Respondent was admitted to the practice of law in California on January 15, 1970, and has been a member of the State Bar at all times since.

### **Probation Violations**

On April 12, 2017, in Supreme Court case No. S239559 (State Bar Court No. 12-J-10617), 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 subject to certain conditions, including a 30-day suspension, as recommended by the Review Department of the State Bar Court in its December 7, 2016, Opinion.

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<sup>2</sup> The certified copy of Respondent's address history from December 30, 1985, to July 17, 2017, included in exhibit one attached to the Office of Probation's motion to revoke Respondent's probation, is not sufficient to establish that the motion was properly served on Respondent on July 21, 2017. Accordingly, the court takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h), which reflect that the motion was properly served on Respondent on July 21, 2017.

2. Respondent comply, among other things, with the following probation conditions:

A. Within 30 days after the effective date of his discipline (to wit, by June 11, 2017), contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation. Respondent was also ordered to meet with the probation deputy either by telephone or in person, upon the direction of the Office of Probation.

B. Comply with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation. Respondent was ordered to report such compliance in writing, under penalty of perjury, to the Office of Probation each January 10, April 10, July 10, and October 10 of the period of probation (quarterly reports).

The Supreme Court order became effective on May 12, 2017, 30 days after it was filed. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.<sup>3</sup>

On May 24, 2017, the Office of Probation uploaded to Respondent's attorney profile on the State Bar's website a reminder letter outlining certain terms and conditions of his probation and setting forth compliance deadlines. Among other things, the letter specifically addressed Respondent's requirement to contact his probation deputy and schedule the required meeting, and his quarterly reporting requirement, including that his reports were due quarterly beginning July 10, 2017. Along with the letter were, among other things, the Supreme Court's April 12, 2017, order imposing discipline; that portion of the review department's opinion setting forth the recommended discipline, including the terms and conditions of probation; and a quarterly report

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<sup>3</sup> Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order on Respondent, rule 8.532(a) of the California Rules of Court required the Supreme Court clerk to promptly transmit a copy of the order to the parties upon filing. Moreover, 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 or her duty and transmitted a copy of the Supreme Court's order to Respondent immediately after its filing.

form and a quarterly report instruction sheet. The letter was not returned by the internet server as undeliverable, or for any other reason.

The Office of Probation also sent an e-mail to Respondent on May 24, 2017, informing him to go to his attorney profile on the State Bar's website to review, download, and print a reminder letter with informational attachments prepared for him by the Office of Probation. Delivery of this e-mail was completed.

Respondent failed to contact the Office of Probation and schedule his required meeting with his probation deputy by June 11, 2017, and he has failed to meet with his probation deputy.

On June 13, 2017, the Office of Probation sent Respondent a letter to his State Bar membership records address setting forth his non-compliance with the condition that he contact the Office of Probation and schedule a meeting with his probation deputy by June 11, 2017. Enclosed with the letter was a copy of the Office of Probation's May 24, 2017, letter with attachments which was uploaded to Respondent's State Bar membership profile on the State Bar's website. The letter was not returned to the Office of Probation by the United States Postal Service as undeliverable, or for any other reason.

Respondent failed to submit to the Office of Probation his first quarterly report due July 10, 2017.

### **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 of 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 probation conditions as ordered by the Supreme Court in case No. S239559. He (1) failed to contact his probation deputy and schedule his required meeting and failed to meet with his probation deputy; and (2) failed to submit his quarterly report due July 10, 2017.

As a result, the revocation of Respondent's probation in California Supreme Court case No. S239559 is warranted.

### **Aggravation**

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

Respondent has one prior record of discipline. On April 12, 2017, the Supreme Court filed an Order in case No. S239559 (State Bar Court No. 12-J-10617) suspending Respondent from practicing law in California for one year; staying execution of that suspension; and placing Respondent on probation for two years subject to certain conditions, including that Respondent be suspended from practicing law for the first 30 days of his probation. Respondent's prior disciplinary matter was a reciprocal discipline proceeding based on Respondent's discipline by the United States Navy's Office of the Judge Advocate General (JAG) for filing an appellate brief that contained misleading and false statements.<sup>4</sup> In an opinion, the Review Department of the State Bar Court affirmed the finding of the hearing department judge that the misconduct

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<sup>4</sup> Respondent was found to have violated rule 3.1 (Meritorious Claims and Contentions) and 3.3 (Candor and Obligations Toward the Tribunal) of JAG Instruction 5803.1C. Respondent was suspended "from practicing law in any proceedings conducted under the supervision and cognizance of the Department of the Navy." (*In the Matter of Partington* (Dec. 7, 2016, 12-J-10617) [nonpub. opn.].) Based on the JAG discipline order, Respondent was also suspended from appearing before the United States Court of Appeals for the Armed Forces for one year. Based on the findings in the JAG proceeding, Respondent was also suspended from practicing for 30 days by the Supreme Court of Hawaii. Furthermore, based on the Hawaii discipline, the District of Columbia Court of Appeals suspended him for 30 days, and the Supreme Court of Oregon suspended him for 60 days.

established in the JAG proceeding warranted reciprocal discipline in California,<sup>5</sup> and that Respondent had failed to establish that due process was violated in the JAG proceedings. In aggravation, Respondent lacked insight into his misconduct. Respondent was given moderate credit in mitigation for his 37 years of practice without prior discipline.

**Indifference Toward Rectification/Atonement (Std. 1.5(k).)**

An attorney's continued failure to comply with his probation conditions after being notified of that non-compliance 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 Respondent was notified, in the Office of Probation's June 13, 2017, letter, of his non-compliance with the condition that he contact the Office of Probation and schedule a meeting with his probation deputy by June 11, 2017, as of July 21, 2017, Respondent still had not done so.

**Lack of Candor/Cooperation to State Bar (Std. 1.5(l).)**

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

**Mitigation**

Since Respondent did not participate in this proceeding, 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(a) requires that the court recommend 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

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<sup>5</sup> The review department found that Respondent willfully violated section 6068, subdivision(d), and his conduct constituted moral turpitude.

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.)

As of the filing of this motion seeking revocation of his probation, Respondent has still not contacted the Office of Probation and scheduled a meeting with his probation deputy. This is the first act required by a probationer and requires only a simple telephone call or e-mail, yet it ensures that a probationer understands the terms and conditions of his discipline. Respondent was provided with notice of the terms and conditions of his disciplinary probation, yet he failed to comply with them, despite repeated reminders from the Office of Probation. Respondent's failure to contact the Office of Probation and schedule and hold the required meeting with his probation deputy demonstrates Respondent's failure to understand or appreciate his professional obligations.

In addition, Respondent has failed to submit his first quarterly report in which he is required to report, in writing and under penalty of perjury, his compliance with the State Bar Act, the Rules of Professional Conduct, and all the conditions of his probation. "At a minimum, quarterly probation reporting is an important step towards an attorney probationer's rehabilitation because it requires the attorney, four times a year, to review and reflect upon his professional conduct . . . . In addition, it requires the attorney to review his conduct to ensure that he complies with all of the conditions of his disciplinary probation." (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.)

Absent compelling mitigating circumstances, an attorney who willfully violates a significant probation condition can anticipate that the expected discipline will be an actual suspension. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 574.)

Furthermore, “the greatest amount of discipline would be merited for violations which show a breach of a condition of probation significantly related to the misconduct for which probation was given. This would be especially significant in circumstances raising a serious concern about the need for public protection or showing the probationer’s failure to undertake rehabilitative steps.” (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) In the underlying disciplinary matter, Respondent’s misconduct involved filing an appellate brief containing misleading and false statements. The probation condition requiring him to submit quarterly reports in which he is required to report, in writing and under penalty of perjury, his compliance with the State Bar Act, the Rules of Professional Conduct, and all the conditions of his probation is a significant probation condition; is related to the misconduct for which probation was imposed; and his failure to submit even his first quarterly report raises concern about public protection and whether Respondent has made efforts towards rehabilitation. The court, therefore, finds that a significant period of actual suspension is warranted in this matter.

The Office of Probation requested, among other things, that Respondent’s probation be revoked and that one year of actual suspension be recommended as the discipline in this matter. The court concurs with the Office of Probation’s recommended discipline, but finds it appropriate pursuant to rule 5.135(A) of the State Bar Rules of Procedure, for Respondent to remain suspended until he provides to the Office of Probation proof of attendance at a session of the State Bar Ethics School and passage of the test given at the end of that session. Furthermore, the court also finds it appropriate to recommend, if Respondent remains suspended for two years or more, that he remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law. (Std. 1.2(c)(1).)

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## Recommendations

### **Discipline**

The court recommends that the probation of Respondent Earle Arthur Partington, member No. 45731, imposed in Supreme Court case No. S239559 (State Bar Court No. 12-J-10617) be revoked; that the previous stay of execution of the suspension be lifted; and that Respondent be suspended from the practice of law for a minimum of one year and that he remain suspended until the following requirements are satisfied:

1. He provides 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 that session;
2. If he remains suspended for two years or more as a result of not satisfying the proceeding condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and present 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. S239559 and remains under an obligation to comply with this requirement.

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

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, 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: September 18, 2017

  
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LUCY ARMENDARIZ  
Judge of the State Bar Court

<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).)

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on September 18, 2017, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION TO REVOKE PROBATION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

EARLE ARTHUR PARTINGTON  
1001 BISHOP ST STE 1330  
HONOLULU, HI 96813

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

TERRIE L. GOLDADE, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 18, 2017.



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Bernadette Molina  
Case Administrator  
State Bar Court