

# PUBLIC MATTER

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STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

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

In the Matter of	)	Case No. 17-PM-02071-YDR
	)	
DANE PAUL MILLER,	)	ORDER GRANTING MOTION TO
	)	REVOKE PROBATION AND ORDER
A Member of the State Bar, No. 226332.	)	OF INVOLUNTARY INACTIVE
_____	)	ENROLLMENT

### Introduction<sup>1</sup>

In this probation revocation proceeding, respondent Dane Paul Miller (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 court also recommends, among other things, that Respondent's probation be revoked; that the

<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.

previously stayed, one-year suspension be lifted; and that he be actually suspended for a minimum of one year and until he provides to the Office of Probation proof of attendance at a session of the State Bar Ethics School and the Ethics School Client Trust Accounting School and passage of the test given at the end of those sessions. Furthermore, if he remains suspended for two years or more, Respondent 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. (Std. 1.2(c)(1).)

### **Significant Procedural History**

On April 11, 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 May 16, 2017.

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

Respondent was admitted to the practice of law in California on September 2, 2003, and has been a member of the State Bar at all times since.

### **Probation Violations**

On December 29, 2015, in Supreme Court case No. S229879 (State Bar Court No. 14-O-04346), 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

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<sup>2</sup> The certified copy of Respondent's address history from September 2, 2003, to March 20, 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 April 11, 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 April 11, 2017.

conditions, including 90 days' suspension, as recommended by the Hearing Department of the State Bar Court in its August 24, 2015 Order Approving Stipulation.

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

A. Within 30 days from the effective date of his discipline (to wit, by February 27, 2016), contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation.

B. Submit to the Office of Probation quarterly reports on each January 10, April 10, July 10 and October 10 of his probation period and, under penalty of perjury, state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all probation conditions during the preceding calendar quarter or applicable portion thereof.

C. Within one year of the effective date of his discipline (to wit, by January 28, 2017) 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.

D. Within one year of the effective date of his discipline (to wit, by January 28, 2017) provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same time period, and passage of the test given at the end of the session.

The Supreme Court order became effective on January 28, 2016, 30 days after it was filed. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.<sup>3</sup>

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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.

On January 20, 2016, the Office of Probation sent a letter to Respondent outlining certain terms and conditions of his probation and setting forth compliance deadlines. Among other things, the letter specifically addressed his requirement to schedule a meeting with his probation deputy and his quarterly reporting, Ethics School, and Client Trust Accounting School requirements. Included with the letter were the Supreme Court's December 29, 2015 order imposing discipline; that portion of the stipulation approved by the hearing department setting forth the terms and conditions of probation; a quarterly report form and a quarterly report instruction sheet; and the Ethics School and Client Trust Accounting School schedule and enrollment information. The letter was not returned by the United States Postal Service as undeliverable or for any other reason.

The Office of Probation sent a letter to Respondent by United States mail and e-mail on March 16, 2016, setting forth his non-compliance with certain conditions of his probation. Enclosed with the letter was a copy of the Office of Probation's January 20, 2016 letter.<sup>4</sup>

On April 11, 2016, Respondent's probation deputy telephoned Respondent at his membership records number and left him a voice mail message stating, in pertinent part, that he was out of compliance with his probation conditions. On the same day, Respondent's probation deputy left a second telephonic voice mail message for Respondent stating, in pertinent part, that he was not in compliance with his probation because he had not contacted her to schedule his required meeting. The probation deputy asked Respondent to contact her immediately and left her telephone number and e-mail address.

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<sup>4</sup> The e-mail delivery of the March 16, 2016 letter e-mailed to Respondent failed. The United States Postal Service returned the March 16, 2016 letter mailed to Respondent as unable to be forwarded. Respondent filed his California Rules of Court, rule 9.20 compliance declaration on March 30, 2016. The compliance declaration set forth a new address at which communications in the future could be directed to Respondent. Respondent's membership record address was updated effective April 11, 2016.

On August 10, 2016, the Office of Probation sent a letter to Respondent setting forth his non-compliance with certain probation conditions and enclosing a copy of the March 16, 2016 letter with attachments. The letter was not returned by the United States Postal Service as undeliverable or for any other reason.

Respondent and his probation deputy exchanged e-mails on August 15, 2016, regarding the scheduling of his required meeting to review the terms and conditions of his probation. This meeting was required to have been scheduled on or before February 27, 2016.

As scheduled, Respondent telephoned his probation deputy on August 17, 2016, for his required meeting. During that meeting, Respondent confirmed his receipt of the letter mailed and e-mailed to him on August 10, 2016, which attached a copy of the March 16, 2016 letter and all of its attachments. The probation deputy reviewed all of the terms and conditions of Respondent's probation with him during the meeting.

On August 17, 2016, Respondent sent an e-mail to his probation deputy attaching his late quarterly reports that had been due on April 10 and July 10, 2016.

Respondent timely submitted his quarterly report due on October 10, 2016, and reported that he registered for the December 15, 2016 Ethics School course and the December 16, 2016 Client Trust Accounting course.

On February 6, 2017, the Office of Probation sent Respondent a letter by mail and e-mail setting forth his non-compliance with certain probation conditions. Specifically, in addition to the late-submitted April 10 and July 10, 2016 quarterly reports and the untimely contacting of his probation deputy to schedule the required meeting, Respondent had not submitted his quarterly report due by January 10, 2017, and had not provided proof of attendance at a session of the

State Bar Ethics School and the Ethics School Client Trust Accounting School and passage of the test given at the end of those sessions.<sup>5</sup>

### **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. S229879. He (1) failed to timely contact his probation deputy to schedule his required meeting; (2) failed to timely submit his quarterly reports due April 10 and July 10, 2016; (3) failed to submit, as of April 11, 2017, his quarterly report due by January 10, 2017; and (4) as of April 11, 2017, failed to provide proof of attendance at a session of the State Bar Ethics School and the Ethics School Client Trust Accounting School and passage of the test given at the end of those sessions.

As a result, the revocation of Respondent's probation in California Supreme Court case No. S229879 is warranted.

### **Aggravation**

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

Respondent has one prior record of discipline. In the underlying matter (S229879), Respondent was suspended from the practice of law for one year; execution of the suspension

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<sup>5</sup> The letter also reflected that Respondent had filed his California Rules of Court, rule 9.20 compliance affidavit late and had not provided proof of passage of the Multistate Professional Responsibility Examination by January 28, 2017.

was stayed; and Respondent was placed on probation for two years subject to certain conditions, including that he be suspended from the practice of law for the first 90 days of probation.

Respondent stipulated that he failed to deposit client funds in a client trust account; failed to render an appropriate accounting; failed to promptly pay client funds as requested by his client; and made payments of personal expenses from his client trust account. In mitigation, Respondent had an approximately eight year period of unblemished legal practice prior to misconduct, and by entering into a stipulation, he acknowledged his misconduct and saved the court resources and time. In aggravation, Respondent committed multiple acts of misconduct, and his conduct caused his client financial harm.

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

Respondent committed multiple acts of wrongdoing by failing to: (1) timely contact his probation deputy to schedule his required meeting; (2) timely submit two quarterly reports; (3) submit another quarterly report; and (4) provide proof of attendance at a session of the State Bar Ethics School and the Ethics School Client Trust Accounting School and passage of the test given at the end of those sessions.

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

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 Respondent was notified of his non-compliance with certain probation conditions in the Office of Probation's July 6, 2016 letter, as of April 11, 2017, Respondent still had not submitted his quarterly report due by January 10, 2017, and had not provided proof of attendance

at a session of the State Bar Ethics School and the Ethics School Client Trust Accounting School and passage of the test given at the end of those sessions.

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

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 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.)

Although Respondent belatedly complied with certain probation conditions, as of the filing of this motion seeking revocation of his probation, he had still failed to submit one quarterly report and had failed to provide proof of attendance at a session of the State Bar Ethics School and the Ethics School Client Trust Accounting School and passage of the test given at the end of those sessions. Respondent was aware of the terms and conditions of his disciplinary probation yet failed to fully comply with them, despite repeated reminders from the Office of Probation.

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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 trust account violations. Thus, the Ethics School and Ethics School Client Trust Accounting School probation conditions, in particular, are significant probation conditions; are related to the misconduct for which probation was imposed; and raise concerns 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 agrees with the Office of Probation’s recommended discipline but finds it appropriate 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 the Ethics School Client Trust Accounting School and passage of the test given at the end of those sessions. 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).)

## Recommendations

### **Discipline**

The court recommends that the probation of Respondent Dane Paul Miller, member No. 226332, imposed in Supreme Court case No. S229879 (State Bar Court case No. 14-O-04346) be revoked; that the previous stay of execution of the suspension be lifted; 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. He provides to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School and passage of the test given at the end of that session; and
3. If he remains suspended for two years or more as a result of not satisfying the proceeding conditions, 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. S229879 and remains under an obligation to comply with this requirement.

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**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: June 13, 2017

  
YVETTE D. ROLAND  
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 Los Angeles, on June 13, 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:

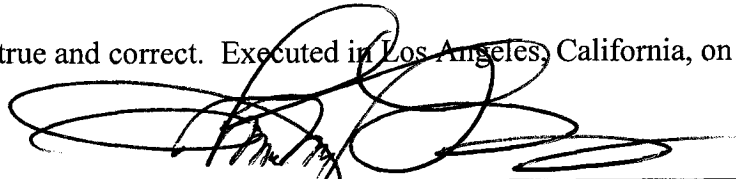
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DANE P. MILLER  
688 S SANTA FE AVE  
APT 108  
LOS ANGELES, CA 90021 - 1332**

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

**TERRIE GOLDADE, PROBATION, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 13, 2017.



Johnnie Lee Smith  
Case Administrator  
State Bar Court