

FILED  
MK  
SEP 17 2018

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

# PUBLIC MATTER

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

In the Matter of	)	Case No. 18-PM-14631-DFM
	)	
RICHARD EUGENE HARROLD,	)	ORDER GRANTING MOTION TO
	)	REVOKE PROBATION AND ORDER
A Member of the State Bar, No. 255163.	)	OF INVOLUNTARY INACTIVE
	)	ENROLLMENT

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

In this probation revocation proceeding, respondent Richard Eugene Harrold (Respondent) is charged with violating certain probation conditions imposed by the California Supreme Court. ). Even though Respondent was properly served on July 16, 2018, with the motion to revoke his probation by mail sent to his State Bar official membership records address by certified mail, return receipt requested<sup>2</sup> and by regular mail, he did not participate in this proceeding. On August 24, 2018, this court issued an order submitting the motion for decision, serving Respondent with a copy of that order. Good cause having been shown, the motion to revoke Respondent's probation is granted and discipline is recommended as set forth below.

---

<sup>1</sup> Unless otherwise indicated, all statutory references are to the Business and Professions Code and all references to rules refer to the State Bar Rules of Professional Conduct. 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.

<sup>2</sup> Bus. & Prof. Code, § 6002.1, subd. (c); Rules Proc. of State Bar, rules 5.25, 5.314(A); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108 [service in a State Bar Court proceeding is complete upon mailing].

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

Respondent was admitted to the practice of law in California on January 31, 2008, and has been a member of the State Bar at all times since.

#### **Probation Violations**

On November 4, 2016, in Supreme Court case No. S236943 (State Bar Court case Nos. 15-O-15941 and 15-O-16019), 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 three years subject to certain conditions as recommended by the Hearing Department of the State Bar Court in its July 5, 2016 Order Approving Stipulation.

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

A. Respondent be suspended from the practice of law for the first 30 days of probation; and

B. Submit a written quarterly report to the Office of Probation on or before 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).

The Supreme Court order became effective on December 4, 2016, 30 days after it was filed. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.<sup>3</sup>

---

<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 November 15, 2016, 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 quarterly reporting requirement, including that his reports were due quarterly beginning April 10, 2017. Included with the letter were, among other things, the Supreme Court's November 4, 2016 order imposing discipline; that portion of the stipulation setting forth the discipline, including the terms and conditions of probation; and a quarterly report form and a quarterly report instruction sheet.

The Office of Probation also sent an e-mail to Respondent on November 15, 2016, 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 email was completed.

Respondent complied with the April 2017, July 2017, and October 2017 reporting requirements. On November 3, 2017, he also provided the Office of Probation with proof that he completed State Bar Ethics School on August 8, 2017.

On January 10, 2018, Respondent submitted a quarterly report that had not been signed and dated. On January 18, 2018, the Office of Probation notified Respondent by email that his January 10, 2018 quarterly report did not comply with the reporting requirements because it was not signed and dated. On May 22, 2018, the Office of Probation sent and emailed a letter to Respondent again notifying him of his noncompliance with his January 10, 2018, reporting requirement, and informing him that he failed to submit his April 10, 2018 quarterly report. The letter was not returned to the Office of Probation by the United States Postal Service as undeliverable, or for any other reason. In addition, delivery of this e-mail was completed.

Respondent failed to submit to the Office of Probation a January 10, 2018 quarterly report that complied with his reporting requirements. He has also failed to submit to the Office of Probation the quarterly reports due April 10, 2018, and July 10, 2018.

### **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. S236943. Respondent failed to submit a January 10, 2018 quarterly report that complied with his reporting requirements and failed to submit his April 10, 2018 and July 10, 2018 quarterly reports. Thus, the revocation of Respondent's probation in California Supreme Court case No. S236943 is warranted.

### **Aggravation**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

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

Respondent has a prior record of discipline. As previously noted, on November 4, 2016, the Supreme Court filed an order in case No. S236943 (State Bar Court case Nos. 15-O-15941, 15-O-16019), suspending Respondent from practicing law in California for one year; staying execution of that suspension; and placing Respondent on probation for three years subject to

certain conditions, including that Respondent be suspended from practicing law for the first 30 days of his probation and until he paid restitution. In his prior discipline, Respondent stipulated to misconduct in two matters. Respondent failed to open and respond to three letters from the membership records office requesting proof that Respondent had complied with the 25-hour MCLE requirements for the February 1, 2012 through January 1, 2015 reporting period. Respondent also failed to open and respond to four emails advising him that he had been selected for an MCLE audit and that he would be placed on “not entitled status” if he failed to comply with the audit. Respondent acknowledged that he received each correspondence, and he was grossly negligent in failing to open them.

From October 31, 2015, through November 18, 2015, Respondent was on “not entitled status” because he failed to respond to the State Bar of California’s audit regarding his MCLE compliance. Respondent held himself out as entitled to practice and did practice law in 21 hearings from November 2, 2015, through November 16, 2015, in wilful violation of sections 6068, subdivision (a), and 6106. Respondent’s misconduct was aggravated by multiple acts but tempered by spontaneous candor and cooperation, remorse, a pre-filing stipulation and community service.

#### **Multiple Acts of Misconduct**

Respondent’s violations of the terms of his disciplinary probation constitute multiple acts of misconduct, which is a substantial aggravating circumstance. (Std. 1.5(b).)

#### **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 the Office of Probation's January 18, 2015 email and May 22, 2018 letter notified Respondent that he failed to comply with the requirement to submit a January 10, 2018 quarterly report, Respondent still had not submitted a signed and dated report.

### **Lack of Participate in Disciplinary Proceeding**

Respondent's failure to participate in this disciplinary proceeding is also a significant aggravating factor because it reflects an ongoing lack of commitment to comply with ethical requirements. (Std. 1.5(1).) Respondent's failure to appear and participate in this proceeding establishes that Respondent fails both to appreciate the seriousness of the charges against him and to comprehend the importance of fulfilling his duty as an attorney to participate in disciplinary proceedings.

### **Mitigation**

It was Respondent's burden to establish mitigating factors. (Std. 1.6.) Since Respondent did not participate in this proceeding, no evidence in mitigation was presented and none is apparent from the record.

### **Discussion**

Section 6093 authorizes the revocation of probation for a violation of a probation condition, but any actual suspension may not exceed the period of stayed suspension imposed in the underlying proceeding. (Rules Proc. of State Bar, rule 5.312.) Standard 2.14 provides:

Actual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders.

In turn, standard 1.8 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding.

As of the filing of this motion seeking revocation of his probation, Respondent has failed to submit a January 10, 2018 quarterly report that complied with his reporting requirements and

failed to submit his April 10, 2018 and July 10, 2018 quarterly reports. 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. "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.) Respondent's failure to comply with his probation conditions demonstrates Respondent's inability to understand or appreciate his professional obligations.

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 engaged in the unauthorized practice of law that resulted from his inattention to his mail and email. 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 are significant probation conditions that are related to the misconduct for which probation was imposed. His failure to submit his quarterly report raises concerns about public protection and

whether Respondent is capable of paying attention to and fulfilling his ethical responsibilities. Thus, 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; that Respondent be placed on involuntary inactive enrollment, and he be ordered to comply with California Rules of Court, rule 9.20. The court concurs with the Office of Probation's recommended discipline, but finds it appropriate to recommend that Respondent be suspended for one year, stayed, and that he be placed on probation subject to various conditions outlined below.

## **RECOMMENDATIONS**

### **Discipline – Probation Revoked**

The court recommends that the probation of Richard Eugene Harrold, State Bar Number 255163, imposed in Supreme Court matter No. S236943 (State Bar Court case Nos. 15-O-15941, 15-O-16019), ) be revoked; that the previous stay of execution of the one-year suspension be lifted; and that Respondent be actually suspended for one year. In addition, it is recommended that Respondent be again placed on probation for a period of three years subject to the following conditions:

1. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.



2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

3. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, he or she must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

4. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

5. During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully,

promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

6. Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

7. **Quarterly Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

a. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form

provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

**b. Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

**c. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

It is not recommended that Respondent be ordered to attend the State Bar Ethics School because Respondent has provided proof that he attended State Bar Ethics School on August 8, 2017, as required by the Supreme Court in case No. S236943. (See Rules Proc. of State Bar, rule 5.135(A).)

#### **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. S236943 and remains under an obligation to comply with this requirement.

**Rule 9.20**

It is 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 imposing discipline in this matter.<sup>4</sup> Failure to do so may result in disbarment or suspension.

**Costs**

It is further 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

**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


---

<sup>4</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed 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, inter alia, 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 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>5</sup> This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: September 17, 2018

  
DONALD F. MILES  
Judge of the State Bar Court

---

<sup>5</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 Court Specialist 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 September 17, 2018, 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:

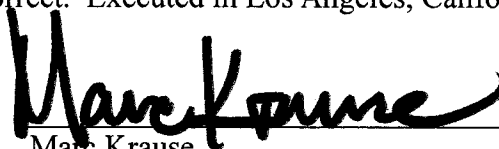
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD E. HARROLD  
509 BOBWHITE CT  
BAKERSFIELD, CA 93309

- 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 Los Angeles, California, on September 17, 2018.



Marc Krause  
Court Specialist  
State Bar Court