

PUBLIC MATTER

FILED
SEP 13 2018
STATE BAR COURT
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LOS ANGELES
P.B.

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 18-PM-14632-CV
)	
HOMER LYNN HARRIS,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION
)	
<u>A Member of the State Bar, No. 227468.</u>)	

Introduction¹

On July 18, 2018, the State Bar's Office of Probation (Probation Office), represented by Supervising Attorney Terrie Goldade, filed a motion seeking to revoke the two-year disciplinary probation that the Supreme Court imposed on respondent HOMER LYNN HARRIS (Respondent) in its August 22, 2017, order in *In re Homer Lynn Harris on Discipline*, case number S242379 (State Bar Court case number 15-O-14677, etc.) (*Harris I*). (§ 6093, subds. (b)&(c); Rules Proc. of State Bar, rule 5.310 et seq.)

As set forth *post*, the court finds, by a preponderance of the evidence (§ 6093, subd. (c); Rules Proc. of State Bar, rule 5.311), that Respondent willfully failed to comply with the conditions of his probation as charged in the motion to revoke probation and will, therefore, grant the motion to revoke probation and recommend that the Supreme Court revoke Respondent's probation.

¹ Unless otherwise indicated, all statutory references are to the Business and Professions Code, and all references to rules are to the State Bar Rules of Professional Conduct

According to the Probation Office, the appropriate level of discipline for the charged probation violations is the imposition, on Respondent, of the entire period of the two-year stayed suspension that the Supreme Court imposed on Respondent in its August 22, 2017, order in *Harris I.* (Rules Proc. of State Bar, rule 5.312.) In addition, the Probation Office seeks Respondent's involuntarily inactive enrollment under section 6007, subdivision (d).

The Probation Office failed to cite any authority to support its contention that Respondent should be suspended from the practice of law for two years. Moreover, the Probation Office failed to provide any analysis to show that Respondent's inactive enrollment is appropriate in light of the Supreme Court's inherent and plenary jurisdiction over attorney discipline. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531-532.)

For the reasons set forth *post*, the court concludes that the appropriate level of discipline for the found probation violations is a two-year suspension that will continue until Respondent establishes his rehabilitation, fitness to practice, and present learning and ability in the general law in accordance with standard 1.2(c)(1) of the Standards for Attorney Sanctions for Professional Misconduct.²

Procedural History

On July 16, 2018, the Probation Office filed and properly served its motion to revoke probation on Respondent at his official State Bar address by certified mail, return receipt requested.³ The service of the motion on Respondent was deemed complete when mailed. (§ 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; but see also *Jones v. Flowers* (2006) 547 U.S. 220, 225, 234.)

² The standards are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

³ In addition, the Probation Office sent a courtesy copy of the motion to Respondent at his official address by first class mail, regular delivery.

Thereafter, Respondent failed to file a response to the motion to revoke probation, and the time in which Respondent had to file a response has expired.

Because Respondent failed to file a response to the motion to revoke probation, the factual allegations contained in the motion and its supporting documents are treated as admissions. (Rules Proc. of State Bar, rule 5.314(C).)

The Probation Office did not request a hearing on the motion. Accordingly, the court took the motion under submission for decision without a hearing on August 14, 2018.⁴

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 4, 2003, and has been licensed to practice law in California since that time.⁵

In its August 22, 2017, order in *Harris I*, the California Supreme Court placed Respondent on two years' stayed suspension and two years' probation with conditions, including a six-month actual suspension that will continue until Respondent establishes his rehabilitation, fitness to practice, and learning and ability in the general law in accordance with standard 1.2(c)(1). The Supreme Court imposed that discipline, including each of the probation conditions, on Respondent in accordance with a stipulation regarding facts, conclusions of law, and disposition that Respondent entered into with the State Bar's Office of Chief Trial Counsel (OCTC) and which this court approved in an order filed on April 21, 2017, in State Bar Court case number 15-O-14677, etc. Thus, Respondent's misconduct here results from his failure to comply with his own agreement.

⁴ The court admits into evidence the declaration of Respondent's assigned probation deputy that is set forth on pages 7 through 9 of the motion to revoke probation and exhibits 1, 2, and 3 to that declaration. (Rules Proc. of State Bar, rule 5.314(H).)

⁵ Even though Respondent has been licensed to practice law since December 4, 2003, Respondent has been suspended from practicing law since September 1, 2017.

The Supreme Court's August 22, 2017, order in *Harris I* became effective on September 21, 2017, and has continuously been in effect since that time. At all times material to the motion to revoke probation, Respondent had actual knowledge of the Supreme Court's August 22, 2017, order.⁶ (Cal. Rules of Court, rule 8.532(a); Evid. Code, § 664; *In re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

Probation-Reporting Condition Violations

Respondent's probation-reporting condition requires, inter alia, that Respondent submit written-quarterly-probation reports to the Probation Office on every January 10, April 10, July 10, and October 10. The record establishes, as charged, that Respondent willfully violated his probation-reporting condition by failing to submit his first three probation reports, which were due on January 10, April 10, and July 10, 2018, respectively, to the Probation Office.

Aggravation

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

Respondent has one prior record of discipline: *Harris I*. In *Harris I*, Respondent stipulated that, between May 2014 and November 2015, he commingled his funds with those of his clients by making five deposits of his personal funds into his client trust account (CTA) and by making 15 payments for his personal and business expenses from his CTA (rule 4-100(A)). Respondent further stipulated that, in one client matter, he entered into a business transaction with the client without notifying the client of the client's right to obtain independent legal advice and without obtaining the client's informed written consent to the transaction (rule 3-300) and that, in a second client matter, he failed to perform legal services competently (rule 3-110(A)), failed to obey a court order (§ 6103), failed to communicate with the client (§ 6068, subd. (m)),

⁶ On October 23, 2017, Respondent and his assigned probation deputy had a telephone meeting in which they reviewed each of the conditions of Respondent's two-year disciplinary probation in *Harris I* and discussed what Respondent had to do to comply with them.

and improperly withdrew from employment (rule 3-700(A)(2)). In addition, Respondent stipulated to aggravation based on multiple acts of misconduct, significant client harm, and harm to the administration of justice. In mitigation, Respondent had 10 years of misconduct-free practice and cooperated with OCTC by stipulating to his misconduct. Also, in *Harris I*, the parties stipulated that Respondent was required to establish his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.2(c)(1) because Respondent was then a 67-year-old United States Veteran, who fought in the Vietnam War, where he was exposed to toxic chemicals that caused him to suffer serious health issues, including degenerative heart disease and cognitive impairment.

Multiple Acts of Misconduct (Std. 1.5(b).)

Respondent's present misconduct involves three violations of his disciplinary probation.

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

Respondent's failure to rectify the present misconduct by belatedly filing his first three probation reports once the Probation Office filed the present motion to revoke probation establishes Respondent's indifference towards rectification. That indifference is an aggravating circumstance. (Std. 1.5(k); *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702.)

Mitigation

Because Respondent did not file a response to the motion to revoke probation, there is no evidence of any mitigating circumstance. And this court is not aware of any mitigating circumstance.

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Discussion

Public protection and attorney rehabilitation are the primary goals of attorney 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 the amount as an actual suspension.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

In determining the appropriate level of discipline in a probation revocation proceeding, the court is to consider the “total length of 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 court is to also consider the seriousness of the probation violations, the respondent’s recognition of his or her misconduct, and the respondent’s efforts to comply with the conditions of probation. (*Ibid.*)

In addition, the court considers standard 1.8(a), which provides: “If a member 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.”

An attorney’s failure to strictly comply with the conditions of his or her disciplinary probation “ ‘demonstrates a lapse of character and a disrespect for the legal system that directly relate to [the attorney’s] fitness to practice law and serve as an officer of the court. [Citation.]’ [Citation.]” (*In the Matter of Tiernan, supra*, 3 Cal. State Bar Ct. Rptr. at p. 530.)

Respondent’s probation-reporting condition, which requires that Respondent self-report his compliance with the State Bar Act, the Rules of Professional Conduct, and all the conditions

of his probation to the Probation Office under penalty of perjury is a *very* important part of Respondent's rehabilitation from the misconduct to which he stipulated in *Harris I.* (*Ritter v. State Bar* (1985) 40 Cal.3d 595, 605; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 152.)

Furthermore, the record reflects that Respondent has failed to undertake any meaningful effort whatsoever to comply with his probation conditions. Attorneys have an unqualified professional duty to comply with the conditions of any disciplinary probation imposed on them. (§ 6068, subd. (k).) Attorneys also have a unqualified duty to cooperate and participate in disciplinary proceedings. (§ 6068, subd. (i).) “ ‘ “It is well settled that an attorney's contemptuous attitude toward the disciplinary proceedings is relevant to the determination of an appropriate sanction.” ’ [Citation.]” *Conroy v. State Bar* (1991) 53 Cal.3d 495, 507.)

Respondent's failure to strictly comply with a very important condition of his probation and his failure to file a response to the motion to revoke probation are both strong evidence that Respondent either fails to appreciate the duties of an attorney or is presently unable to fulfill the duties of an attorney.

In sum, having considered the foregoing factors, the court concludes that Respondent's present probation violations warrant the greatest level of discipline permissible, which is the imposition of an actual suspension equal to the full period of the two-year stayed suspension imposed on Respondent in the Supreme Court's August 22, 2017, order in *Harris I* (Rules Proc. of State Bar, rule 5.312).

The court does not recommend that Respondent be again ordered to take and pass a professional responsibility examination because he was ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) in the Supreme Court's August 22, 2017, order in *Harris I*. That portion of the Supreme Court's August 22, 2017, order will remain in effect

even after Respondent's probation is revoked in this proceeding. And, if Respondent fails to take and pass the MPRE within the time prescribed in the Supreme Court's August 22, 2017, order (or as it may be extended by the State Bar Court), Respondent will be suspended from the practice of law until he does. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

Because the court recommends that Respondent's two-year probation in *Harris I* be revoked, Respondent will no longer be required to comply with the probation conditions that require him to attend and successfully complete Ethics School and Client Trust Accounting School if the Supreme Court imposes the recommended discipline in this matter. Nonetheless, Respondent's successful completion of those two schools could be considered in determining whether Respondent has proven his rehabilitation, fitness to practice, and learning and ability in the general law under standard 1.2(c)(1).

Likewise, to prove his rehabilitation, fitness to practice, and learning and ability in the general law, Respondent must maintain proof of his compliance with the Supreme Court's order in this proceeding that directs Respondent to 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 rule 9.20(c) compliance affidavit filed by Respondent with the State Bar Court.

In light of the fact that Respondent will remain suspended from the practice of law under the Supreme Court's August 22, 2017, order in *Harris I*, the court rejects the Probation Office's request to order Respondent's inactive enrollment under section 6007, subdivision (d). (*In the Matter of Tiernan, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 531-532.)

Order & Recommendations

The court orders that the Office of Probation's July 16, 2018, motion to revoke probation is GRANTED.

Discipline

It is recommended that the probation of Homer Lynn Harris, State Bar Number 227468, imposed in Supreme Court case number S242379 (State Bar Court case No. 15-O-14677, etc.) be revoked; that the stay of the previously stayed two-year suspension be lifted; and that Respondent actually be suspended from the practice of law in the State of California for two years and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

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 imposing discipline in this matter.⁷ Failure to do so may result in disbarment or suspension.

⁷ 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).)

Costs

Finally, it is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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.

Dated: September 12, 2018.



CYNTHIA VALENZUELA
Judge of the State Bar Court

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 13, 2018, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION TO REVOKE PROBATION

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

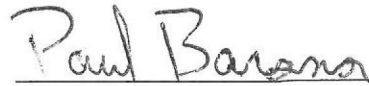
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

HOMER L. HARRIS
HOMER L HARRIS & ASSOCIATES
188 REGAL DR
LAWRENCEVILLE, GA 30046 - 4769

- 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 13, 2018.



Paul Barona
Court Specialist
State Bar Court