

People v. Heather S. Hodgson. 20PDJ024. August 5, 2021.

On August 5, 2021, the Presiding Disciplinary Judge issued an order revoking Heather S. Hodgson's (attorney registration number 33183) two-year period of probation, vacating the stay on her thirty-day period of suspension, and suspending her for thirty days. At Hodgson's request, the Presiding Disciplinary Judge briefly extended the effective date of the suspension, which took effect on September 1, 2021.

In 2020, Hodgson was suspended from the practice of law for thirty days, all to be stayed upon the successful completion of a two-year period of probation. Her probation was subject to certain requirements, including her abstention from all alcohol and drugs and her compliance with sobriety monitoring conditions. Hodgson violated the terms of her probation when she failed to satisfy her abstention and sobriety monitoring conditions, and the Presiding Disciplinary Judge determined that he must revoke Hodgson's probation and lift the stay on her period of suspension.

The case file is public per C.R.C.P. 251.31. Please see the order below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
<hr/> Petitioner: THE PEOPLE OF THE STATE OF COLORADO Respondent: HEATHER S. HODGSON, #33183	<hr/> Case Number: 20PDJ024
ORDER REVOKING PROBATION UNDER C.R.C.P. 251.7(e)	

In case number 20PDJ024, Heather S. Hodgson (“Respondent”) was suspended for thirty days, all to be stayed conditioned on her successful completion of a two-year period of probation, which was subject to certain requirements, including her abstention from all alcohol and drugs and her compliance with sobriety monitoring conditions. Because Respondent has substantially failed to maintain her sobriety and to comply with the monitoring conditions, her probation must be revoked and her thirty-day suspension must be activated.

I. PROCEDURAL HISTORY

On September 28, 2020, the Presiding Disciplinary Judge (“the Court”) approved a “Stipulation, Agreement and Affidavit Containing the Respondent’s Conditional Admission of Misconduct,” between Jane B. Cox of the Office of Attorney Regulation Counsel (“the People”) and Respondent. The stipulation provided for a thirty-day suspension from the practice of law, to be stayed upon the successful completion of a two-year period of probation. In the stipulation, Respondent agreed that she violated Colo. RPC 1.3; Colo. RPC 1.4(a)(3); Colo. RPC 1.4(a)(4); Colo. RPC 1.16(d); Colo. RPC 3.4(c); and Colo. RPC 8.4(b).

The terms of Respondent’s probation, which took effect September 28, 2020, requires her to abstain from the use of alcohol or drugs. The terms also call for her to be tested twice daily—once in the morning and once in the evening—for alcohol use through a SOBERLINK device for the first year of her probationary period. A noncompliant test is a positive test or a test for which the identity of the operator is declined. In the event that Respondent disputes the validity of a positive breath alcohol test (“BAT”), Respondent must submit to an EtG urinalysis screen, to be administered at a testing facility approved by the People, the day following the positive BAT. If Respondent misses a test within the

predefined testing times, Respondent must submit to an EtG screen the day following the missed BAT.¹

On July 8, 2021, the People filed a “Motion for Order to Show Cause Under C.R.C.P. 251.7(e)” alleging that Respondent violated the terms of her probation by substantially failing to maintain her sobriety and by failing to comply with her monitoring conditions. The Court issued a show cause order. On July 22, 2021, Respondent, through her counsel Leonard Berenato, responded in writing to the show cause order. Neither party requested a hearing under C.R.C.P. 251.7(e).

II. FINDINGS OF FACT

The People allege that Respondent violated her probation by failing to comply with the sobriety and monitoring conditions. The Court makes findings of fact below about Respondent’s monitoring.²

Respondent recorded her first noncompliant SOBERLINK test result on December 22, 2020. Between December 22 and December 31, 2020, Respondent’s SOBERLINK report shows eleven missed or noncompliant tests.³ Though she was obligated to submit EtG screen results following these positive and missed SOBERLINK tests in December, Respondent failed to submit any EtG results.

The People state that although Respondent communicated with them around that time about her efforts to regain sobriety, she continued to exhibit a pattern of late, missed, and noncompliant SOBERLINK tests into 2021. Respondent missed or posted noncompliant tests twenty-three times in January 2021.⁴ In February 2021, Respondent missed seventeen tests and recorded four noncompliant tests.⁵ In March 2021, Respondent missed thirty-six tests and registered one noncompliant test.⁶ According to the People, Respondent failed to submit EtG screen results following any of these missed or noncompliant tests in the first quarter of 2021.

The People report that on March 24, 2021, Respondent voluntarily obtained a SCRAM ankle monitoring unit as part of her criminal probation. The SCRAM unit demonstrated that Respondent temporarily regained sobriety for a forty-four day monitoring period. She also resumed SOBERLINK testing, missing only one scheduled test in April 2021 and recording only one noncompliant test in May 2021.⁷ Following the positive test result of May 2021, say the People, Respondent provided an EtG screen result that showed she had not consumed alcohol.

¹ See Stip. ¶ 24.

² Where not otherwise indicated, facts are drawn from the People’s motion and Respondent’s response.

³ Mot. Ex. 1.

⁴ Mot. Ex. 1.

⁵ Mot. Ex. 1.

⁶ Mot. Ex. 1.

⁷ Mot. Ex. 1.

On June 18, 2021, however, Respondent registered a noncompliant test result.⁸ She again began missing scheduled SOBERLINK tests, with one noncompliant test and fourteen missed tests between June 24 and July 6, 2021.⁹ The People assert that Respondent has failed to submit any EtG screen results following the most current missed and noncompliant tests.

Finally, the People allege that in addition to her failure to comply with the testing requirements, Respondent has neglected to pay for the SOBERLINK device and service, as required under the terms of her probation. Per the stipulation, Respondent must pay the People on the first day of each month the monthly fee for use of the device. The People claim that Respondent has made partial payment for the month of February 2021 but has submitted no payment for the months of March, April, May, June, or July 2021, and thus owes them \$715.00 in total.

Respondent does not appear to dispute the People's allegations, and she "acknowledges that she has had some difficulty staying in strict compliance with the terms and conditions" of her stipulation with the People.¹⁰ Respondent assures the Court that despite her setbacks, she continues to work diligently to maintain sobriety and to comply with her probationary conditions. She also makes several specific representations about her efforts, though she does not corroborate those representations with supporting documents. She states that she is presently in full compliance with her criminal probation; she has completed a level II alcohol education class, fifty hours of alcohol therapy, and an intensive outpatient program for a second time; she is attending relapse prevention therapy through the Center for Discovery; she is seeing an addiction specialist, Dr. Edrich, one time per month; she is receiving injections of Naltroxene; she is attending AA meetings on Facebook; she continues to do Soberlink two times per day and has performed the appropriate EtG for two tests in the last week; and she mailed a check to the People for \$715.00 on July 20, 2021.

III. LEGAL STANDARDS AND ANALYSIS

C.R.C.P. 251.7(e) permits the People, should they receive information indicating that a lawyer may have violated probationary conditions, to move for an order requiring the lawyer to show cause why her or his stayed suspension should not be activated. If either party so requests, the Court must hold a hearing on the motion.¹¹ In a probation revocation matter, the People bear the burden of establishing probationary violations by a preponderance of the evidence.¹² The Court must thereafter decide whether to revoke the lawyer's probation.¹³

⁸ Mot. Ex. 1.

⁹ Mot. Ex. 1.

¹⁰ Resp. ¶ 1.

¹¹ C.R.C.P. 251.7(e).

¹² *Id.*

¹³ *Id.*

The People have proved by a preponderance of the evidence that Respondent did not abstain from alcohol as required under her probationary conditions. They also have proved by the preponderance of the evidence that she failed to abide by her monitoring conditions. By the Court's calculations, in the first quarter of 2021, Respondent missed or registered as noncompliant for more than eighty tests. Though she then appears to have regained sobriety for more than two months, she later began missing tests again in mid-June 2021. Between June 24 and July 6, 2021, Respondent missed fourteen tests and registered one noncompliant test.

Respondent rightfully reminds the Court that alcoholism is a difficult disease, and the Court is aware that regaining and maintaining sobriety is a daily struggle. The Court applauds the many steps Respondent has taken toward sustained recovery, and it encourages Respondent to continue her hard work. Nonetheless, the People gave Respondent quite a lot of leeway when, in early 2021, she substantially failed to comply with the monitoring conditions. Now, in summer 2021, she has demonstrated a renewed pattern of neglecting her required monitoring obligations. The People have concluded that additional latitude is not appropriate, primarily given that Respondent's participation in monitoring was a key condition of her probation, as the most serious underlying misconduct in this case involved Respondent's second alcohol-related DUI. The Court is not in a position to second-guess the People's judgment based on the record before it.

The Court thus concludes that the People have met their burden of establishing by a preponderance of evidence that Respondent has failed to abide by her probationary conditions between December 2020 and July 2021, with two sustained periods of noncompliance. Because she has failed to meaningfully satisfy her sobriety and monitoring conditions under the terms of the parties' stipulation, her probation should be revoked and she should be suspended for thirty days.

IV. ORDER

The Court **REVOKES** Respondent's probation, **LIFTS** the stay on Respondent's thirty-day suspension, and **SUSPENDS** Respondent from the practice of law for **THIRTY DAYS, EFFECTIVE THURSDAY, AUGUST 19, 2021**.

On that date, the Court will issue an "Order and Notice of Suspension." Within fourteen days thereafter, Respondent **SHALL** comply with C.R.C.P. 251.28(d), requiring a lawyer to file an affidavit with the Court setting forth pending matters and attesting, *inter alia*, to notification of clients and of other jurisdictions where she is licensed. If Respondent wishes to resume the practice of law, she will be required to submit to the People, within twenty-eight days before the end of her suspension, an affidavit complying with C.R.C.P. 251.29(b).

DATED THIS 5th DAY OF AUGUST, 2021.



William R. Lucero
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

Jane B. Cox
Office of Attorney Regulation Counsel

Via Email
j.cox@csc.state.co.us

Leonard Berenato
Respondent's Counsel

Via Email
lberenato@1626washingtonlaw.com