

SEP 24 2003

PUBLIC MATTER

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of
CHARLES MARX,
Member No. 124630,
A Member of the State Bar.

Case No. 03-PM-01559-JMR

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

I. INTRODUCTION

Based upon alleged probation violations, the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") filed a motion to revoke the probation of Respondent Charles Marx ("Respondent") imposed by the Supreme Court in its order filed on September 4, 2002, in Case No. S107542 (State Bar Court Case No. 01-O-03998).

The State Bar requests that Respondent's probation be revoked, and that Respondent be actually suspended for one year, the period of suspension previously stayed by the Supreme Court.¹ The State Bar also requests that Respondent be ordered to comply with rule 955 of the California Rules of Court ("rule 955") and that Respondent be involuntarily enrolled as an inactive member of

¹The full period of suspension previously stayed was one year and until Respondent has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. However, the State Bar does not recommend in this matter that Respondent remain suspended until he satisfies the requirements of standard 1.4(c)(ii), and the court concurs in this disciplinary recommendation.



1 the State Bar pursuant to Business and Professions Code section 6007(d).²

2 For the reasons stated below, the State Bar's motion to revoke Respondent's probation is
3 hereby granted, as is its request to involuntarily enroll Respondent to inactive status. The court
4 therefore recommends that Respondent be actually suspended from the practice of law for one year,
5 and that he be ordered to comply with rule 955. The court shall also involuntarily enroll Respondent
6 as an inactive member of the State Bar pursuant to section 6007(d).

7 **II. PERTINENT PROCEDURAL HISTORY**

8 On July 17, 2003, the State Bar filed with the State Bar Court a motion to revoke
9 Respondent's probation, accompanied by the declaration of Eddie Esqueda and Exhibits 1-3 in
10 support of said motion. Copies of the motion, the declaration of Eddie Esqueda and Exhibits 1-3
11 in support of said motion were properly served upon Respondent by certified mail, return receipt
12 requested, addressed to Respondent at his latest address shown on the official membership records
13 of the State Bar ("official address") pursuant to section 6002.1(c) and rules 60 and 563(a) of the
14 Rules of Procedure of the State Bar of California ("Rules of Procedure").³ The State Bar did not
15 request a hearing in this matter. Copies of the motion and supporting documents were not returned
16 to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

17 Respondent did not file a response to the State Bar's motion to revoke his probation, and the
18 time for doing so expired.

19 The court therefore ordered this matter to stand submitted for decision as of August 25,
20 2003.⁴

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22 ²Unless otherwise indicated, all further references to sections refer to provisions of the
23 California Business and Professions Code.

24 ³Pursuant to Evidence Code section 452(h), the State Bar requests in its motion that the
25 court take judicial notice of all Respondent's official membership addresses maintained by the
26 State Bar of California. The State Bar's request is hereby granted.

27 ⁴On August 25, 2003, the court issued a Submission Order in which this matter was
28 ordered to stand submitted for decision as of the date of the filing of said order. A copy of the
Submission Order was properly served upon Respondent on August 25, 2003, by first-class mail,
postage fully paid, addressed to Respondent at his official address. The copy of said order served
upon Respondent was not returned to the State Bar Court by the U.S. Postal Service as

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III. FINDINGS OF FACT⁵

Jurisdiction

Pursuant to Evidence Code section 452(h), the court takes judicial notice of the official membership records pertaining to Respondent which are maintained by the State Bar of California. These records reflect that Respondent was admitted to the practice of law in the State of California on December 11, 1986, was a member at all times pertinent to the allegations herein, and is currently a member of the State Bar of California.

Probation Violations

On September 4, 2002, the Supreme Court filed an order in Case No. S107542 (State Bar Court Case No. 01-O-03998) ("Supreme Court order"), suspending Respondent from the practice of law for one year and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct; staying execution of said suspension; and placing Respondent on probation for two years subject to certain conditions of probation.

Pursuant to the Supreme Court order, Respondent was ordered to comply with the following terms and conditions of probation, among others:

(a) to submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10 and October 10 of the period of probation, stating under penalty of perjury whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct and all probation conditions during the preceding calendar quarter; and

(b) to abide by all probation conditions set forth in Supreme Court Case No. _____
undeliverable or for any other reason.

⁵These findings of fact are based on the admitted factual allegations contained in the State Bar's motion to revoke Respondent's probation, the declaration of Eddie Esqueda and State Bar Exhibits 1-3 attached thereto. (Rules Proc. of State Bar, rule 563(b)(3).) The declaration of Eddie Esqueda and State Bar Exhibits 1-3 are admitted into evidence pursuant to rule 563(e) of the Rules of Procedure. Esqueda's declaration references an exhibit 4, however, the State Bar failed to attach exhibit 4 to the motion.

1 S088399;

2 (c) to file his April 10, July 10, and October 10, 2001, quarterly reports by May 10,
3 2002; and

4 (d) to fulfill the State Bar Ethics School requirement ordered in Supreme Court Case
5 No. S088399 by September 2002.

6 The Supreme Court order became effective on October 4, 2002, thirty days after it was
7 entered. (Cal. Rules of Court, rule 953(a).)⁶

8 The disciplinary orders imposing probation and a letter confirming the terms and conditions
9 of probation, including suspension, were provided to Respondent by the Probation Unit on
10 September 25, 2002.

11 By letter dated September 25, 2002, Probation Deputy Eddie Esqueda ("Esqueda") notified
12 Respondent of the status of Respondent's compliance with the terms and conditions of his probation.
13 The letter was not returned to Esqueda as undeliverable by the U.S. Postal Service.

14 Respondent has not complied with the terms of his probation as follows: (1) the Probation
15 Department has not received Respondent's quarterly reports for the months of January and April
16 2003; (2) Respondent has not provided proof to the Probation Department that he successfully
17 competed the State Bar's Ethics School by September 2002; and (3) the Probation Department has
18 not received the quarterly reports due by May 10, 2002.

19 **IV. CONCLUSIONS OF LAW**

20 Bad faith is not a requirement for a finding of culpability in a probation violation matter;
21 "instead, a 'general purpose or willingness' to commit an act or permit an omission is sufficient.
22 (Citations.)" (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

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24 ⁶Although no proof was offered that the Clerk of the Supreme Court served the Supreme
25 Court's order upon Respondent, rule 24(a) of the California Rules of Court requires clerks of
26 reviewing courts to immediately transmit a copy of all decisions of those courts to the parties
27 upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties
28 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.

1 Pursuant to section 6093(c) and rule 561 of the Rules of Procedure, the court concludes that the State
2 Bar has demonstrated by a preponderance of the evidence that Respondent wilfully violated the
3 conditions of probation ordered by the Supreme Court by failing to submit the quarterly reports
4 which were due by May 10, 2002, January 10, 2003, and April 10, 2003, and by failing to submit
5 proof to the Probation Unit that he successfully completed the State Bar's Ethics School by
6 September 2002. These conclusions warrant revocation of probation as provided by section 6093(b).

7 **V. AGGRAVATING CIRCUMSTANCES**

8 In aggravation, Respondent has a record of two prior impositions of discipline. (Rules Proc.
9 of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i)("standard").)⁷

10 On July 27, 2000, the Supreme Court filed an order in Case No. S088399 (State Bar Court
11 Case No. 00-J-10069), suspending Respondent from the practice of law for one year, staying
12 execution of said suspension, and placing Respondent on probation for two years subject to
13 conditions of probation, including a 30-day period of actual suspension. Respondent was found
14 culpable of wilfully violating sections 6068(m) and 6103 and rule 3-700(A)(2) of the Rules of
15 Professional Conduct of the State Bar of California, based on misconduct in matters pending before
16 the United States District Court, Eastern District of California, which resulted in his disbarment from
17 the practice of law in that jurisdiction.

18 Furthermore, as set forth above, on September 4, 2002, the Supreme Court filed an order in
19 Case No. S107542 (State Bar Court Case No. 01-O-03998), suspending Respondent from the
20 practice of law for one year and until he has shown proof satisfactory to the State Bar Court of his
21 rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard
22 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct; staying execution of
23 said suspension; and placing Respondent on probation for two years subject to certain conditions of
24 probation. Respondent was found culpable of wilfully violating sections 6068(k) and 6103 for
25 failing to file two quarterly probation reports and for failing to attend State Bar Ethics School.

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28 ⁷Pursuant to Evidence Code section 452(d), the court takes judicial notice of
Respondent's prior record of discipline.

1 Respondent's multiple acts of misconduct in this matter is also an aggravating circumstance.
2 (Standard 1.2(b)(ii).)

3 VI. MITIGATING CIRCUMSTANCES

4 Respondent did not participate either in propria persona or through counsel in this
5 disciplinary proceeding. No mitigating evidence was therefore offered on Respondent's behalf or
6 received into evidence and none can be gleaned from this record.

7 VII. DISCUSSION

8 Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary
9 probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In*
10 *the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) In determining the
11 level of discipline, the court must consider the "total length of stayed suspension which could be
12 imposed as an actual suspension and the total amount of actual suspension earlier imposed as a
13 condition of the discipline at the time probation was granted." (*In the Matter of Potack, supra*,
14 (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. at p. 540.)

15 Section 6093 authorizes the revocation of probation for a violation of a probation condition,
16 and standard 1.7 requires that the court recommend a greater discipline in this matter than that
17 imposed in the underlying disciplinary proceeding. However, the extent of the discipline to
18 recommend is dependent, in part, on the seriousness of the probation violation and Respondent's
19 recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of*
20 *Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) Furthermore, "[t]he violation of a probation
21 condition significantly related to the attorney's prior misconduct merits the greatest discipline,
22 especially if the violation raises a serious concern about the need to protect the public or shows the
23 attorney's failure to undertake steps toward rehabilitation." (*In the Matter of Broderick* (Review
24 Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151.)

25 In this matter, the court is concerned about Respondent's failure to comply with the above-
26 mentioned conditions of his probation, as well as his failure to participate in this disciplinary
27 proceeding. Of particular concern to this court is the fact that this is Respondent's third disciplinary
28 proceeding, and the probation violations in this proceeding involve, in part, the same misconduct for

1 which he was disciplined in Supreme Court Case No. S107542 (State Bar Court Case No. 01-O-
2 03998) - failing to submit two quarterly reports and fulfill the State Bar Ethics School requirement
3 ordered in Supreme Court Case No. S088399. In addition, Respondent also failed to file two
4 quarterly reports required by the discipline imposed in Supreme Court Case No. S107542 (State Bar
5 Court Case No. 01-O-03998). "[A] probation 'reporting requirement permits the State Bar to
6 monitor [an attorney probationer's] compliance with professional standards.'" (*In the Matter of*
7 *Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40
8 Cal.3d 595, 605.) In addition, "an attorney probationer's filing of quarterly probation reports is an
9 important step towards the attorney's rehabilitation." (*In the Matter of Weiner, supra*, 3 Cal. State
10 Bar Ct. Rptr. at p. 763.) Furthermore, the requirement that Respondent timely fulfill the State Bar
11 Ethics School requirement is important to ensuring both the protection of the public and the
12 rehabilitation of the attorney. Respondent's failure to submit quarterly reports and to timely fulfill
13 the State Bar Ethics School requirement, as well as his failure to offer any explanation in this
14 proceeding for his failure to do so, is of great concern to this court.

15 In the disciplinary matter which underlies this probation proceeding, Respondent was
16 suspended from the practice of law for one year and until he has shown proof satisfactory to the State
17 Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant
18 to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct; the
19 execution of said suspension was stayed; and Respondent was placed on probation for two years.
20 No period of actual suspension was imposed in Respondent's underlying disciplinary proceeding.

21 The State Bar recommends in this matter, inter alia, that Respondent be actually suspended
22 for one year as a result of his probation violations in this matter. The court concurs. Given the
23 nature of Respondent's prior disciplinary matter, his failure to again submit the two quarterly
24 probation reports and to timely fulfill the Ethics School condition required by the probation imposed
25 in his first disciplinary matter, combined with his failure to submit two quarterly probation reports
26 required by the probation imposed in his second disciplinary matter, warrants substantial discipline.

27 Accordingly, the court finds good cause to GRANT the State Bar's motion to revoke
28 Respondent's probation.

1 **VIII. DISCIPLINE RECOMMENDATION**

2 The court hereby recommends to the Supreme Court that Respondent's probation pursuant
3 to the Supreme Court order in Case No. S107542 (State Bar Court Case No. 01-O-03998) be
4 revoked, that the previous stay of execution of the suspension be lifted, and that Respondent,
5 CHARLES M. MARX, be actually suspended from the practice of law for one year.

6 It is further recommended that Respondent be ordered to comply with rule 955 of the
7 California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule,
8 within thirty (30) and forty (40) days, respectively, from the effective date of the Supreme Court
9 order herein.⁸

10 It is not recommended that Respondent be ordered to take and pass the Multistate
11 Professional Responsibility Examination as he was ordered to do so in Supreme Court Case No.
12 S088399 (State Bar Court Case No. 00-J-10069).⁹

13 **IX. ORDER REGARDING INACTIVE ENROLLMENT**

14 The State Bar requests that Respondent be involuntarily enrolled inactive pursuant to section
15 6007(d). The requirements of section 6007(d)(1) have been met: Respondent is subject to a stayed
16 suspension, he has been found to have violated probation conditions, and it has been recommended
17 that Respondent be actually suspended due to said violations.

18 IT IS THEREFORE ORDERED that Respondent, CHARLES MARX, be involuntarily
19 enrolled as an inactive member of the State Bar of California pursuant to section 6007(d). This
20 enrollment shall be effective three days after this order is filed.

21 IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by section
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23 ⁸Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify.
24 (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

25 ⁹Pursuant to Evidence Code section 452(h), the court takes judicial notice of the State
26 Bar's official membership records pertaining to Respondent, which reflect that effective January
27 11, 2002, Respondent was suspended for failing to take and pass the Multistate Professional
28 Responsibility Examination as ordered by the Supreme Court in Case No. S088399. Respondent
remains under said suspension as of the date of this order granting the State Bar's motion to
revoke his probation and will remain suspended until he provides proof of passage of the
Multistate Professional Responsibility Examination.

1 6007(d)(2).

2 IT IS FURTHER RECOMMENDED that Respondent's actual suspension in this matter
3 commence as of the date of his inactive enrollment pursuant to this order. (Section 6007(d)(3).)

4 **X. COSTS**

5 It is further recommended that costs be awarded to the State Bar pursuant to section 6086.10,
6 and that those costs be payable in accordance with section 6140.7.

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10 Dated: September 24, 2003


JOANN M. REMKE
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 24, 2003, 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:

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

**CHARLES M. MARX
1001 PAGE ST #27
SAN FRANCISCO CA 94117**

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

MARIA OROPEZA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **September 24, 2003.**



Laine Silber
Case Administrator
State Bar Court