

**FILED**JAN 13 2004 *JS***STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES****THE STATE BAR COURT****HEARING DEPARTMENT - LOS ANGELES****PUBLIC MATTER**

In the Matter of

**ROLANDO M. LUIS,****Member No. 139574,**A Member of the State Bar.**Case No. 03-PM-03298-RMT****DECISION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT****INTRODUCTION**

Based upon alleged probation violations, the Office of the Chief Trial Counsel of the State Bar ("State Bar"), represented by Deputy Trial Counsel Kimberly Anderson, filed a motion pursuant to Business and Professions Code sections 6093(b) and 6093(c)<sup>1</sup> and rules 560 et seq. of the Rules Proc. of State Bar ("rule(s)") to revoke the probation of ROLANDO M. LUIS, imposed by the Supreme Court in its, order, S102790, (State Bar Court case no. 01-O-00318).

Respondent did not participate in this proceeding although he was properly served with the motion to revoke his probation by certified mail, return receipt requested.

For the reasons stated below, this Court finds by a preponderance of the evidence that Respondent wilfully failed to comply with the terms of his probation. (Section 6093(c).) As a result, the Court grants the State Bar's motion to revoke Respondent's probation and its request to involuntarily enroll him as an inactive member of the State Bar pursuant to section 6007(d). The

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<sup>1</sup>Unless otherwise indicated, all further references to "section" refer to provisions of the Business and Professions Code.

1 Court, therefore, recommends that Respondent's probation be revoked, that the previously ordered  
2 stay be lifted, and that Respondent be actually suspended from the practice of law for thirty months,  
3 among other things, as explained below..

#### 4 **FINDINGS OF FACT**

##### 5 **Jurisdiction**

6 Respondent was admitted to the practice of law in the State of California on May 31, 1989,  
7 was a member at all times pertinent to the allegations herein, and is currently a member of the State  
8 Bar of California.<sup>2</sup>

##### 9 **Probation Violations**

10 On October 22, 2001, the State Bar Court approved the stipulation of the parties in case no.  
11 01-O-00318, recommending discipline consisting of three years stayed suspension, five years  
12 probation and two years actual suspension, which is to continue until he complies with standard  
13 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. A copy of the stipulation  
14 and the State Bar Court's order approving the same were properly served upon Respondent on the  
15 same date, at his State Bar membership records address, by first-class mail, postage prepaid.

16 On March 4, 2002, the California Supreme Court filed an order in case no. S102790  
17 ("Supreme Court order") accepting the State Bar Court's recommendation and ordering Respondent  
18 to comply with the conditions of probation recommended. Pursuant to the Supreme Court order,  
19 Respondent was ordered to comply with the following terms and conditions of probation, among  
20 others:

21 (a) Submit to the Office of Probation a written report on January 10, April 10, July  
22 10 and October 10 of each year or part thereof during which the probation is in effect, stating under  
23 penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of  
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25 <sup>2</sup>The Court judicially notices the records of the State Bar's Membership Office, which  
26 show that Respondent was involuntarily enrolled as an inactive member, effective September 1,  
27 2001, as a result of his failure to comply with continuing legal education requirements, and  
28 suspended from the practice of law, effective September 16, 2003, for failure to pay annual  
membership fees, and that both the inactive enrollment and the suspension remain in effective.  
(Evid. Code 452(h).)

1 Professional Conduct during said period;

2 (b) Submit to the Office of Probation, within one year of the effective date of the  
3 discipline imposed, proof of successful completion of the State Bar's Ethics School.

4 The Supreme Court order became effective on April 3, 2002, thirty days after it was entered.  
5 (Rule 953(a), California Rules of Court.) It was properly served on Respondent.<sup>3</sup>

6 On March 27, 2002, a probation deputy of the Office of Probation wrote a letter to  
7 Respondent reminding him of the terms and conditions of the suspension and probation imposed  
8 pursuant to the Supreme Court's order. The letter reminded Respondent of his obligation to file  
9 quarterly reports, with the first one due on July 10, 2002, and to submit proof of his completion of  
10 ethics school by April 3, 2003. The letter also warned Respondent that failure to comply with the  
11 probation conditions could lead to further disciplinary proceedings. Enclosed with the letter were  
12 copies of the Supreme Court's order, the portion of the stipulation that outlined the probation  
13 conditions, an instruction sheet and form to use in submitting quarterly reports, and the State Bar's  
14 Ethics School scheduling and enrollment form, among other things.

15 The March 27, 2002, letter was mailed on that same date to Respondent's official State Bar  
16 membership records address via the United States Postal Service with first-class postage prepaid.  
17 The letter was not returned as undeliverable.

18 Respondent failed to submit to the Office of Probation the quarterly reports due on April 10,  
19 2003 and July 10, 2003, and proof of successful completion of ethics school by April 3, 2003. As  
20 of September 8, 2003, the date of filing of the motion in this matter, Respondent has not complied  
21 with the aforementioned provisions of the Supreme Court's order.

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24 <sup>3</sup>Although 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 **CONCLUSIONS OF LAW**

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

5 Pursuant to Business and Professions Code section 6093(b) and (c) and rule 561, the Court  
6 concludes that the State Bar has demonstrated by a preponderance of the evidence that Respondent  
7 wilfully violated the conditions of probation ordered by the Supreme Court in its March 4, 2002,  
8 order in Supreme Court case number S102790 by failing to submit to the Office of Probation the  
9 quarterly reports for April 10 and July 10, 2003, and proof of successful completion of ethics school  
10 by April 3, 2003.

11 **AGGRAVATING CIRCUMSTANCES**

12 In aggravation, Respondent has a prior record of discipline. (Standard 1.2(b)(i).) As  
13 previously discussed, discipline was imposed in Supreme Court case number S102790, effective  
14 April 3, 2002. The underlying disciplinary matter involved the following: entering into an  
15 agreement to split legal fees with a non lawyer, and the commission of acts of moral turpitude or  
16 dishonesty by engaging in a conspiracy to commit insurance fraud and making misrepresentations  
17 to the State Bar regarding his action in the fraudulent scheme, in violation of rule 1-320(A) of the  
18 Rules of Professional Conduct and section 6106 of the Business and Professions Code, respectively.

19 Respondent engaged in multiple acts of misconduct. by failing to comply with multiple  
20 conditions of probation. (Standard 1.2(b)(ii).)

21 Respondent significantly harmed the administration of justice as his failure to comply with  
22 the conditions of his probation made it more much difficult for the State Bar to appropriately monitor  
23 him in seeking to insure the protection of the public and the courts. (Standard 1.2(b)(iv).)

24 Respondent's failure to comply with the probation conditions after being reminded by the  
25 Office of Probation demonstrates indifference toward rectification of or atonement for the  
26 consequences of his misconduct. (Standard 1.2(b)(v).)

27 **MITIGATING CIRCUMSTANCES**

28 No mitigating evidence was offered on Respondent's behalf or received into evidence, and

1 none can be gleaned from the record.

## 2 DISCUSSION

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

10 Section 6093 authorizes the revocation of probation for a violation of a probation condition,  
11 and standard 1.7 requires that the Court recommend a greater discipline in this matter than that  
12 imposed in the underlying disciplinary proceeding. However, the period of actual suspension  
13 recommended in the instant case cannot exceed the period of stayed suspension imposed in the  
14 underlying proceeding. (Rule 562.) The extent of the discipline to recommend is dependent, in part,  
15 on the seriousness of the probation violation and Respondent's recognition of his misconduct and  
16 his efforts to comply with the conditions. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr.  
17 at p. 540.)

18 The State Bar requests that Respondent's probation imposed by the Supreme Court in its  
19 March 4, 2002, order in Supreme Court matter S102790 be revoked, that the stay of execution of the  
20 suspension previously imposed be lifted, and that Respondent be actually suspended for three years,  
21 and until he demonstrates compliance with standard 1.4(c)(ii), among other things. The Court notes,  
22 however, that the stayed suspension imposed by the Supreme Court in the underlying matter was a  
23 straight three years. Therefore, in this probation revocation proceeding, any actual suspension  
24 recommended shall not exceed the entire period of stayed suspension, that is, three years. (Rule 562.)

25 Respondent participated in his prior disciplinary proceeding and entered into a stipulation  
26 to resolve the matter. Respondent, therefore, was well aware of the terms and conditions of his  
27 disciplinary probation, and he did, in fact, initially comply with the terms and conditions of his  
28 probation. However, later and without explanation, he stopped complying with his probation, failing

1 to submit quarterly reports and failing to submit proof regarding ethics school.

2 "[A] probation 'reporting requirement permits the State Bar to monitor [an attorney  
3 probationer's] compliance with professional standards.'" (*In the Matter of Weiner* (Review Dept.  
4 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In  
5 addition, "an attorney probationer's filing of quarterly probation reports is an important step towards  
6 the attorney's rehabilitation." (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)  
7 Respondent's failure to file quarterly reports demonstrates a lack of rehabilitation, and therefore,  
8 warrants significant discipline. In light of Respondent's repeated violation of probation conditions,  
9 and of his troubling lack of participation in these proceedings, the Court does not believe it prudent  
10 to again recommend placing him on probation subject to conditions. The prior disciplinary order  
11 "provided [Respondent] an opportunity to reform his conduct to the ethical strictures of the  
12 profession. His culpability in [the matter] presently under consideration sadly indicates either his  
13 unwillingness or inability to do so." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.)

14 Accordingly, the Court finds good cause to GRANT the motion to revoke Respondent's  
15 probation. The Court agrees that Respondent should be required to demonstrate his rehabilitation  
16 before he is permitted to return to the practice of law, in light of the fact that he has not been  
17 entitled to practice law since September 1, 2001, when he was placed on administrative inactive  
18 membership status as a result of his failure to comply with continuing legal education requirements.  
19 However, it is meaningless to attach compliance with standard 1.4(c)(ii) to the full three year  
20 suspension because Respondent's suspension must terminate at the end of the three year period.  
21 (Rule 562.) The Court, therefore, will recommend a thirty month suspension, rather than a three  
22 year suspension, and attach the requirement of compliance with standard 1.4(c)(ii). By doing so, the  
23 Court is protecting the public by building in an incentive for Respondent to demonstrate his  
24 rehabilitation.. In other words, it is up to Respondent as to whether his suspension will go beyond  
25 thirty months. If he demonstrates rehabilitation, his suspension can end at thirty months, but if he  
26 does not satisfy this Court that he is rehabilitated, he will serve the full three year suspension that  
27 was previously stayed.  
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1 to a stayed suspension, was found to have violated probation conditions, and it has been  
2 recommended that Respondent be actually suspended due to said violations.

3 IT IS THEREFORE ORDERED that Respondent ROLANDO M. LUIS be involuntarily  
4 enrolled as an inactive member of the State Bar of California pursuant to Business and Professions  
5 Code section 60007(d). This enrollment shall be effective three days following service of this order.

6 IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by Business  
7 and Professions Code section 6007(d)(2).

8 IT IS RECOMMENDED that Respondent's actual suspension in this matter commence as  
9 of the date of her inactive enrollment pursuant to this order. (Business and Professions Code section  
10 6007(d)(3).)

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13 Dated: January 13, 2004

  
14 ROBERT M. TALCOTT  
15 Judge of the State Bar Court  
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**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 Los Angeles, on January 13, 2004, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,  
filed January 13, 2004**

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 Los Angeles, California, addressed as follows:

**ROLANDO M. LUIS  
P.O. BOX 15011  
LONG BEACH CA 90815-0011**

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

**KIMBERLY ANDERSON, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 13, 2004.**



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**Tammy R. Cleaver**  
Case Administrator  
State Bar Court