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DEC 23 2003

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

PUBLIC MATTER

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**THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 03-PM-03444-AIN
DENNIS DUANE ZIEGLER,)	DECISION AND ORDER OF
Member No. 193050,)	INVOLUNTARY INACTIVE
<u>A Member of the State Bar.</u>)	ENROLLMENT

INTRODUCTION

Based upon alleged probation violations, the Office of Probation of the State Bar, represented by Supervising Attorney for the Office of Probation, Jayne Kim, filed a motion pursuant to Business and Professions Code sections 6093(b) and 6093(c)¹ and rules 560 et seq. of the Rules Proc. of State Bar ("rule(s)") to revoke the probation of DENNIS DUANE ZIEGLER imposed by the Supreme Court in its May 16, 2002, order, S104721 (State Bar Court case nos. 00-O-12785; 00-O-13307; 00-O-13347; 00-O-13549; 00-O-14538; 00-C-13151; 00-O-15662 (Cons.)).

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. The motion to revoke probation was not returned to the Office of Probation by the postal service as undeliverable.

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 Office of Probation's motion to revoke Respondent's probation and its

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

1 request to involuntarily enroll him as an inactive member of the State Bar pursuant to section
2 6007(d). The Court, therefore, recommends that Respondent's probation be revoked, that the
3 previously ordered stay be lifted, and that Respondent be actually suspended from the practice of law
4 for four years, among other things.

5 FINDINGS OF FACT

6 Jurisdiction

7 Respondent was admitted to the practice of law in the State of California on December 9,
8 1997, was a member at all times pertinent to the allegations herein, and is currently a member of the
9 State Bar of California.²

10 Probation Violations

11 On January 11, 2002, the State Bar Court approved the stipulation of the parties in case nos.
12 00-O-12785; 00-O-13307; 00-O-13347; 00-O-13549; 00-O-14538; 00-C-13151; 00-O-15662
13 (Cons.), recommending discipline consisting of four years stayed suspension, four years probation
14 and three years actual suspension, which is to continue until he makes specified restitution, among
15 other things. A copy of the stipulation and the State Bar Court's order approving the same were
16 properly served upon Respondent on the same date, at his State Bar membership records address,
17 by first-class mail, postage prepaid.

18 On May 16, 2002, the California Supreme Court filed an order in case no. S104721
19 ("Supreme Court order") accepting the State Bar Court's recommendation and ordering Respondent
20 to comply with the conditions of probation recommended. Pursuant to the Supreme Court order,
21 Respondent was ordered to comply with the following terms and conditions of probation, among
22 others:

23 (a) Submit to the Office of Probation a written report on January 10, April 10, July
24 10 and October 10 of each year or part thereof during which the probation is in effect, stating under
25

26 ²The Court judicially notices the records of the State Bar's Membership Office, which
27 show that Respondent was suspended from the practice of law, effective September 1, 2001, for
28 failure to pay annual membership fees, and that suspension remains in effective. (Evid. Code
452(h).)

1 penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of
2 Professional Conduct during said period;

3 (b) Submit to the Office of Probation each month proof of attendance at a minimum
4 of five meetings of Narcotics Anonymous (“NA”);

5 (c) Submit to the Office of Probation each month lab reports to demonstrate that he
6 has abstained from the use of alcohol and or drugs;

7 (d) Submit to the Office of Probation quarterly financial reports regarding the
8 possession of client funds during the reporting period;

9 (e) Report to the Membership Records Office and the Office of Probation all changes
10 of information, including address and telephone number.

11 The Supreme Court order became effective on June 15, 2002, thirty days after it was entered.
12 (Rule 953(a), California Rules of Court.) It was properly served on Respondent.³

13 On June 12, 2002, the Office of Probation wrote a letter to Respondent reminding him of
14 the terms and conditions of his suspension and probation imposed pursuant to the Supreme Court’s
15 order. The letter reminded Respondent of his obligation to file quarterly reports, with the first one
16 due on October 10, 2002; to submit proof monthly of attendance at a minimum of five meetings
17 of NA; to submit monthly of lab reports showing abstinence from alcohol and or drugs; to submit
18 quarterly reports regarding possession of client funds; and to report any changes in his address or
19 telephone number, among other things.⁴ The letter also warned Respondent that failure to comply
20

21 ³Although no proof was offered that the Clerk of the Supreme Court served the Supreme
22 Court’s order upon Respondent, rule 24(a) of the California Rules of Court requires clerks of
23 reviewing courts to immediately transmit a copy of all decisions of those courts to the parties
24 upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties
25 have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in
26 the absence of evidence to the contrary, this Court finds that the Clerk of the Supreme Court
27 performed his or her duty and transmitted a copy of the Supreme Court’s order to Respondent
28 immediately after its filing.

29 ⁴The subject letter also stated that Respondent was required to submit quarterly proof of
30 restitution payments. The Court notes that the stipulation of the parties in the underlying matter
31 provided for both payment of restitution as a condition of probation, that is, within one year of
32 the effective date of the discipline, and payment of restitution during the three-year actual

1 with the probation conditions could lead to further disciplinary proceedings. Enclosed with the
2 letter were copies of the Supreme Court's order, the portion of the stipulation that outlined the
3 probation conditions, and an instruction sheet and form to use in submitting quarterly reports.

4 The June 12, 2002, letter was mailed on that same date to Respondent's official State Bar
5 membership records address via the United States Postal Service with first-class postage prepaid.
6 The letter was not returned as undeliverable.

7 On January 24, 2003, Dane Dauphine, Supervising Trial Counsel, sent a letter to Respondent
8 reminding him that he had not complied with the conditions of his probation, specifically, he did not
9 submit the quarterly reports due October 10, 2002 and January 10, 2003, and the monthly reports
10 regarding NA meetings. The letter was not returned as undeliverable.

11 Respondent subsequently complied with the condition requiring him to file quarterly reports.
12 However, he later failed to file the quarterly report due July 10, 2003.

13 On September 17, 2003, a probation deputy attempted to call Respondent, using the
14 telephone number listed on his membership record. The deputy was unable to reach Respondent by
15 telephone as the number repeatedly registered as busy.

16 On October 16, 2003, the Office of Probation sent Respondent a letter advising him that it
17 had not received his quarterly reports for July 10, 2003, and October 10, 2003, as well as the
18 quarterly reports regarding possession of client funds, and the monthly reports regarding his
19 attendance at NA meetings. The subject letter requested that Respondent submit the required
20 information forthwith. The letter was not returned as undeliverable.

21 Respondent neither responded to the October 16, 2003, letter nor submitted the requested
22 information to the Office of Probation.

23 _____
24 suspension, with the suspension to continue until the restitution is fully paid. The order of the
25 Supreme Court specifically attached the payment of restitution to Respondent's actual suspension
26 period.

26 In its motion to revoke probation, the Office of Probation included Respondent's failure
27 to submit quarterly proof of restitution payments as one of the violations of probation. However,
28 since the Supreme Court order attached the payment of restitution to Respondent's suspension,
the Court does not find his failure to pay restitution to be a probation violation in this matter.

1 On October 20, 2003, a probation deputy attempted to reach Respondent by e-mail, using the
2 address listed on his membership record. However, the e-mail message was returned as
3 undeliverable.

4 On October 21, 2002, Jayne Kim, Supervising Attorney of the Office of Probation, sent a
5 letter to Respondent at a Nevada address she obtained from the court file in the underlying
6 disciplinary matter. In the subject letter, Ms. Kim outlined not only Respondent's non compliance
7 with the conditions of his probation, but also the efforts of the Office of Probation to contact
8 Respondent at his official address, telephone number, and e-mail address, including the repeated
9 busy signal for his telephone number. Ms. Kim reminded Respondent that, as a further condition
10 of probation, he was required to maintain a current address and telephone number. She asked
11 Respondent to contact her immediately, and warned him that if she had not heard from him by
12 October 31, 2003, she would be filing a motion to revoke his probation.

13 Respondent has not submitted the quarterly reports due on July 10, 2003, and October 10,
14 2003. For the period October 2002 through September 2003, Respondent has not submitted proof
15 of attendance at five NA meetings per month. For the period October 2002 to September 2003,
16 Respondent has not submitted monthly lab reports. Respondent has not submitted quarterly financial
17 reports regarding the possession of client funds. Respondent has not reported any change in his
18 membership records address or telephone number.

19 As of October 30, 2003, the date of filing of the motion in this matter, Respondent has not
20 complied with the aforementioned provisions of the Supreme Court's order.

21 CONCLUSIONS OF LAW

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

25 Pursuant to Business and Professions Code section 6093(b) and (c) and rule 561, the Court
26 concludes that the Office of Probation has demonstrated by a preponderance of the evidence that
27 Respondent wilfully violated the conditions of probation ordered by the Supreme Court in its May
28 16, 2002, order in Supreme Court case number S104721 by failing to comply with the conditions

1 set forth above.

2 **AGGRAVATING CIRCUMSTANCES**

3 In aggravation, Respondent has a prior record of discipline. (Standard 1.2(b)(i).) As
4 previously discussed, discipline was imposed in Supreme Court case number S104721, effective
5 June 15, 2002. The underlying matter involved the following: (1) client trust account violations, to
6 wit, commingling of personal and trust funds, and the commission of acts of moral turpitude or
7 dishonesty by issuing numerous checks against insufficient funds, and misappropriating client funds,
8 in violation of rule 4-100(A) of the Rules of Professional Conduct, and section 6106;
9 (2) conviction of a crime where the circumstances involved moral turpitude, to wit, possession of
10 a controlled substance, a felony; (3) the mishandling of a client matter by failing to keep the client
11 informed of significant developments in the matter, failing to notify the client of the receipt of funds,
12 failing to account for the funds and to promptly pay or deliver the funds to the client, and the
13 commission of acts of moral turpitude or dishonesty by making misrepresentations to the client, and
14 misappropriating funds that belonged to the client, in violation of section 6068(m), rule 4-100(B)(1),
15 4-100(B)(3), 4-100(B)(4) and section 6106, respectively.

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

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

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

24 **MITIGATING CIRCUMSTANCES**

25 No mitigating evidence was offered on Respondent's behalf or received into evidence, and
26 none can be gleaned from the record.

27 **DISCUSSION**

28 Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary

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

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

15 The Office of Probation requests that Respondent’s probation imposed by the Supreme Court
16 in its May 16, 2002, order in Supreme Court matter S104721 be revoked, that the stay of execution
17 of the suspension previously imposed be lifted, and that Respondent be actually suspended for four
18 years, among other things. The Court agrees with the recommendation.

19 In this matter, Respondent failed over a lengthy period of time to comply with multiple
20 conditions of his probation, despite repeated reminders of his non compliance. The Court notes that
21 Respondent participated in his prior disciplinary proceeding and entered into a stipulation to resolve
22 it. Respondent, therefore, was well aware of the terms and conditions of his disciplinary probation,
23 yet, he failed to comply with the conditions.

24 “[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney
25 probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept.
26 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In
27 addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards
28 the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)

1 Respondent's failure to file quarterly and other reports demonstrates a total lack of rehabilitation,
2 and therefore, warrants significant discipline. Moreover, Respondent did not comply with the
3 conditions relating to substance abuse, which clearly was an issue in the earlier conviction matter.

4 In light of Respondent's repeated violation of probation conditions, and of his troubling lack
5 of participation in these proceedings, the Court does not believe it prudent to again recommend
6 placing him on probation subject to conditions.

7 The prior disciplinary order "provided [Respondent] an opportunity to reform his conduct
8 to the ethical strictures of the profession. His culpability in [the matter] presently under
9 consideration sadly indicates either his unwillingness or inability to do so." (*Arden v. State Bar*
10 (1987) 43 Cal.3d 713, 728.)

11 Accordingly, the Court finds good cause to GRANT the motion to revoke Respondent's
12 probation and recommends the imposition of substantial suspension period.

13 **DISCIPLINE RECOMMENDATION**

14 The Court hereby recommends to the Supreme Court that Respondent's probation in
15 Supreme Court matter S104721 (State Bar Court case nos. 00-O-12785; 00-O-13307; 00-O-13347;
16 00-O-13549; 00-O-14538; 00-C-13151; 00-O-15662 (Cons.)) be revoked, that the previous stay of
17 execution of the suspension be lifted, and that Respondent DENNIS DUANE ZIEGLER be actually
18 suspended from the practice of law for four years.

19 The Court is not recommending that Respondent be ordered to comply with the requirements
20 of rule 955 of the California Rules of Court, since Respondent has not returned to the practice of law
21 since interim suspension on September 10, 2001.

22 **COSTS**

23 The Court recommends that costs be awarded to the State Bar pursuant to Business and
24 Professions Code section 6086.10, and that those costs be payable in accordance with section 6140.7.

25 **ORDER REGARDING INACTIVE ENROLLMENT**

26 Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code
27 section 6007(d). The requirements of section 6007(d)(1) have been met: Respondent was subject
28 to a stayed suspension, was found to have violated probation conditions, and it has been

1 recommended that Respondent be actually suspended due to said violations.

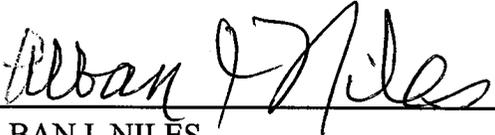
2 IT IS THEREFORE ORDERED that Respondent DENNIS DUANE ZIEGLER be
3 involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and
4 Professions Code section 60007(d). This enrollment shall be effective three days following service
5 of this order.

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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Dated: December 19, 2003


ALBAN I. NILES
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 Los Angeles, on December 23, 2003, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,
filed DECEMBER 23, 2003**

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

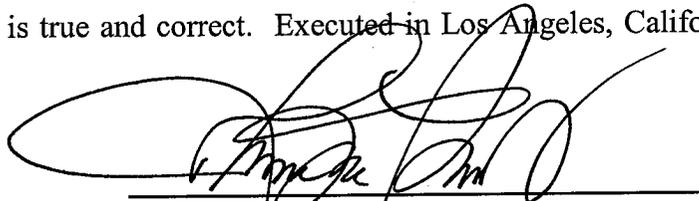
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DENNIS D. ZIEGLER
8950 W OLYMPIC BLVD #154
BEVERLY HILLS CA 90211**

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

JAYNE KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 23, 2003.



Johnnie Lee Smith
Case Administrator
State Bar Court