

FEB 4 2004

STATE BAR COURT  
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LOS ANGELES

## THE STATE BAR COURT

## HEARING DEPARTMENT - LOS ANGELES

In the Matter of

JOSEPH MARIOTT HARTLEY,

Member No. 97610,

A Member of the State Bar.

Case No. 03-PM-04401-RAH

DECISION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENTINTRODUCTION

Based upon alleged probation violations, the, State Bar of California, Office of Probation, represented by Jayne Kim, Supervising Attorney, 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 Joseph Mariott Hartley, imposed by the Supreme Court in its April 12, 2003 order in Supreme Court matter S104452 (State Bar Court case no.98-O-02754). Respondent did not participate in this proceeding although he was properly served with the motion by certified mail, return receipt requested, at his State Bar membership records address.<sup>2</sup>

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 request to involuntarily enroll him as an inactive member of the State Bar pursuant to section 6007(d). The

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

<sup>2</sup>On December 8, 2003, Respondent was properly served at his official address with a notice of status conference to be held on January 9, 2004.



1 Court recommends that Respondent's probation be revoked, that the previously-ordered stay be  
2 lifted, and that he be actually suspended from the practice of law for one year, among other things.

3 **FINDINGS OF FACT**

4 **Jurisdiction**

5 Respondent was admitted to the practice of law in the State of California on May 29, 1981,  
6 was a member at all times pertinent to the allegations herein, and is currently a member of the State  
7 Bar of California.

8 **Probation Violations**

9 On December 27, 2001, the State Bar Court filed an order approving the stipulation of the  
10 parties in case no. 98-O-02754, recommending discipline consisting of one year stayed suspension,  
11 three years probation on conditions including actual suspension of 60 days, among other things.  
12 A copy of the stipulation and the State Bar Court's order approving the stipulation were properly  
13 served upon Respondent's counsel on December 27, 2001.

14 On April 12, 2002, the California Supreme Court filed an order in case no. S104452  
15 ("Supreme Court order") accepting the State Bar Court's recommendation and ordering Respondent  
16 to comply with the conditions of probation recommended.

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

19 (a) During the period of probation, to submit a written report on January 10, April 10, July  
20 10 and October 10 of each year or part thereof during which the probation is in effect to the Office  
21 of Probation, stating under penalty of perjury that he has complied with all provisions of the State  
22 Bar Act and Rules of Professional Conduct during said period;

23 (b) With each quarterly report submitted to the Office of Probation, to provide proof of  
24 monthly medical treatment;

25 (c) Submit to the Office of Probation, by May 12, 2003, proof of attendance of State Bar  
26 Ethics School;

27 (d) To meet and cooperate with his assigned probation monitor; and

28 (e) To submit to the Office of Probation, within 18 months of the effective date of the

1 discipline, evidence of completion of ten hours of Minimum Continuing Legal Education (MCLE)  
2 courses.

3 The Supreme Court order became effective on May 12, 2002, thirty days after it was entered.  
4 (Rule 953(a), California Rules of Court.) It was properly served on Respondent.<sup>3</sup>

5 On May 22, 2002, the Office of Probation wrote a letter to Respondent reminding him of the  
6 terms and conditions of his suspension and probation imposed pursuant to the Supreme Court's  
7 order. The letter also instructed Respondent to contact his assigned probation monitor within 10 days  
8 of the letter, and Respondent was provided with the name, address and telephone number of the  
9 monitor. The letter also warned Respondent that failure to comply with the probation conditions  
10 could lead to further disciplinary proceedings. Enclosed with the letter were copies of the Supreme  
11 Court's order, the probation conditions portion of the stipulation, and an instruction sheet and form  
12 to use in submitting quarterly reports. On that same date, the Office of Probation sent a letter to the  
13 assigned probation monitor and included copies of the letter being sent to Respondent and the  
14 disciplinary order.

15 The May 22, 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 This correspondence from the Office of Probation was not returned as undeliverable.

18 On January 13, 2003, the Office of Probation received a quarterly report from the probation  
19 monitor, indicating Respondent had never met with or contacted him.

20 On January 24, 2003, the Office of Probation attempted to reach Respondent at the telephone  
21 number listed on his membership record regarding his compliance with his probation. A message  
22 was left for Respondent, asking him to call the probation deputy regarding compliance with his

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23  
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 probation conditions. Respondent did not respond to the telephone message.

2 On April 14, 2003, July 21, 2003, and October 16, 2003, the Office of Probation received  
3 additional quarterly reports from the probation monitor, indicating that Respondent still had not met  
4 with or contacted the monitor.

5 On October 20, 2003, the Office of Probation called Respondent at the telephone number  
6 listed on his membership record, and left a message for him to call the probation deputy regarding  
7 his compliance with probation. On that same day, the probation deputy also called Respondent at  
8 a cell phone number contained in his probation file, and left a similar message. Respondent did not  
9 respond to either message.

10 On October 22, 2003, the probation deputy mailed Respondent a reminder letter regarding  
11 the terms and conditions of his probation. The letter was not returned by the postal service as  
12 undeliverable. However, Respondent did not respond to the subject letter.

13 Respondent has not complied with the conditions of his probation. He has not: (1) submitted  
14 written quarterly reports due on July 10 and October 10, 2003; (2) reviewed the terms and conditions  
15 of his probation with his assigned monitor and cooperated with the monitor; (3) submitted proof of  
16 monthly medical treatment for the months of June through September 2003; (4) provided proof of  
17 successful completion of State Bar Ethics School by May 12, 2003; and (5) provided proof of the  
18 completion of ten hours of MCLE approved courses by November 11, 2003.

19 As of December 3, 2003, the date of the filing of the motion to revoke his probation,  
20 Respondent has not 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 sections 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 April  
28 12, 2003, order in Supreme Court case number S104452. He has not: 1) submitted written quarterly

1 reports due on July 10 and October 10, 2003; (2) reviewed the terms and conditions of his probation  
2 with his assigned monitor and cooperated with the monitor; (3) submitted proof of monthly medical  
3 treatment for the months of June through September 2003; (4) provided proof of successful  
4 completion of State Bar Ethics school by May 12, 2003; and (5) provided proof of the completion  
5 of ten hours of MCLE approved courses by November 11, 2003.

#### 6 AGGRAVATING CIRCUMSTANCES

7 In aggravation, Respondent has one prior record of discipline. (Standard 1.2(b)(i).) As  
8 previously discussed, discipline was imposed in Supreme Court case number S104452. In  
9 connection with a single client matter, Respondent was found to have committed an act of moral  
10 turpitude, sought to mislead a judge, failed to comply with a court order, and failed to keep the client  
11 informed of significant developments in the case.

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

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

17 Respondent's failure to comply with the probation conditions after being reminded by the  
18 Office of Probation on more than one occasion demonstrates indifference toward rectification of or  
19 atonement for the consequences of his misconduct. (Standard 1.2(b)(v).)

#### 20 MITIGATING CIRCUMSTANCES

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

#### 23 DISCUSSION

24 Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary  
25 probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In*  
26 *the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) In determining the  
27 level of discipline, the Court must consider the "total length of stayed suspension which could be  
28 imposed as an actual suspension and the total amount of actual suspension earlier imposed as a

1 condition of the discipline at the time probation was granted.” (*In the Matter of Potack, supra*, 1  
2 Cal. State Bar Ct. Rptr. at p. 540.)

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

11 The Office of Probation requests that Respondent’s probation imposed by the Supreme Court  
12 in its April 12, 2002, order in Supreme Court matter S104452 be revoked, that the stay of execution  
13 of the suspension previously imposed be lifted, and that Respondent be actually suspended for one  
14 year, among other things. The Court agrees.

15 In this matter, the Court is concerned about Respondent’s failure to comply with the above-  
16 mentioned conditions of his probation. The Court notes that Respondent participated in his prior  
17 disciplinary proceeding and entered into a stipulation to resolve it. Respondent was aware of the  
18 terms and conditions of his disciplinary probation, yet failed to comply with them.

19 “[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney  
20 probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept.  
21 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In  
22 addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards  
23 the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)  
24 Thus, Respondent’s failure to file quarterly reports warrants significant discipline. Moreover, he did  
25 not cooperate with his assigned monitor and he failed to submit proof of compliance with other  
26 important conditions such as medical treatment, ethics school, and MCLE courses. There is no  
27 indication that Respondent took steps to comply with any of these conditions.

28 In light of Respondent’s lack of participation in these proceedings and his continuing

1 noncompliance with the probation conditions, despite the Office of Probation's efforts to assist him  
2 in complying with his probation, the Court does not believe it worthwhile to recommend again  
3 placing him on probation subject to conditions. The Court is convinced that Respondent is not a  
4 good candidate for probation.

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

9 Accordingly, the Court finds good cause to **GRANT** the motion to revoke Respondent's  
10 probation and recommends the imposition of substantial discipline in this matter in the absence of  
11 evidence supporting an alternative.

#### 12 **DISCIPLINE RECOMMENDATION**

13 The Court hereby recommends to the Supreme Court that Respondent's probation in  
14 Supreme Court matter S104452 (State Bar Court case no. 98-O-0275) be revoked, that the previous  
15 stay of execution of the suspension be lifted, and that Respondent Joseph Mariott Hartley be actually  
16 suspended from the practice of law for one year.

17 It is also recommended that Respondent be ordered to comply with the requirements of rule  
18 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme  
19 Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the  
20 effective date of the order showing his compliance with said order.<sup>4</sup>

21 It is not recommended that Respondent be ordered to take and pass the Multistate  
22 Professional Responsibility Examination as he was ordered to do so in Supreme Court matter  
23 S104452 (State Bar Court case no. 98-O-02754).

#### 24 **COSTS**

25 The Court recommends that costs be awarded to the State Bar pursuant to Business and  
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27 <sup>4</sup>Respondent is required to file a rule 955(c) affidavit even if he has no clients.  
28 (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

1 Professions Code section 6086.10, and that those costs be payable in accordance with section 6140.7.

2 **ORDER REGARDING INACTIVE ENROLLMENT**

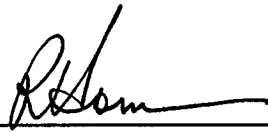
3 Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code  
4 section 6007(d). The requirements of section 6007(d)(1) have been met: Respondent was subject  
5 to a stayed suspension, was found to have violated probation conditions, and it has been  
6 recommended that Respondent be actually suspended due to said violations.

7 IT IS THEREFORE ORDERED that Respondent Joseph Mariott Hartley, be involuntarily  
8 enrolled as an inactive member of the State Bar of California pursuant to Business and Professions  
9 Code section 6007(d). This enrollment shall be effective three days following service of this order.

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

12 IT IS RECOMMENDED that Respondent's actual suspension in this matter commence as  
13 of the date of his inactive enrollment pursuant to this order. (Business and Professions Code section  
14 6007(d)(3).)

15  
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17  
18 Dated: February 3, 2004

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20 \_\_\_\_\_  
21 **RICHARD A. HONN**  
22 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 February 4, 2004, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,**  
**filed February 4, 2004**

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

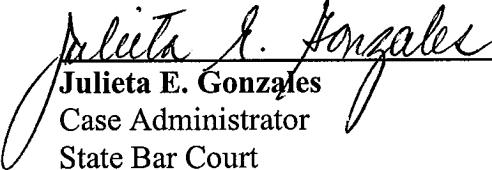
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOSEPH M HARTLEY ESQ**  
**2118 WILSHIRE BLVD #352**  
**SANTA MONICA, CA 90403**

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

**Jayne Kim, Office of Probation, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 4, 2004.**

  
**Julieta E. Gonzales**  
Case Administrator  
State Bar Court