

PUBLIC MATTER

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In the Matter of)
JUAN CHACON,)
Member No. 141465,)
A Member of the State Bar.)

Case No. 04-PM-14090-PEM
**ORDER GRANTING MOTION TO
REVOKE PROBATION**

I. Introduction

In this probation revocation proceeding, Respondent **JUAN CHACON** is charged with violating his probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (State Bar) seeks to revoke his probation, to impose upon Respondent the entire period of suspension previously stayed, and to involuntarily enroll Respondent as an inactive member of the State Bar.

The court finds, by preponderance of the evidence, that Respondent has violated his probation conditions and hereby grants the motion in part. The court recommends, among other things, that Respondent's probation be revoked, that the previous stay of execution of the two years suspension be partially lifted, that Respondent be placed on probation for two years on conditions, including 90 days of actual suspension and State Bar Ethics School Client Trust Accounting School, and that Respondent comply with California Rules of Court, rule 955.

II. Pertinent Procedural History

On August 27, 2004, the State Bar filed and properly served a motion to revoke probation on Respondent, under rules 60 and 563(a) of the Rules of Procedure of the State Bar of California.¹

¹References to rules are to the Rules of Procedure of the State Bar.

1 Respondent, represented by attorney Edward O. Lear, filed a response on September 22, 2004.

2 At the March 24, 2005 status conference, since the parties had reached a stipulation regarding
3 undisputed facts, the court vacated the trial date. The stipulation regarding undisputed facts was
4 filed March 29, 2005.

5 The court took this matter under submission on April 15, 2005, following the filing of the
6 parties' briefs on discipline.

7 **III. Findings of Fact and Conclusions of Law**

8 The following findings of fact are based on the parties' stipulation regarding undisputed facts,
9 declarations, and the documentary evidence attached to the parties' briefs.

10 **A. Jurisdiction**

11 Respondent was admitted to the practice of law in California on July 20, 1989, and has since
12 been a member of the State Bar of California.

13 **B. Probation Conditions in Supreme Court Case No. S118405**

14 On November 18, 2003, in Supreme Court case No. S118405 (SCO), the California Supreme
15 Court ordered that:

- 16 1. Respondent be suspended from the practice of law for two years, that execution of
17 the suspension be stayed;
- 18 2. Respondent be placed on probation for two years, on the condition that he be actually
19 suspended for 75 days, as recommended by the Hearing Department of the State Bar
20 Court in its order approving stipulation filed June 26, 2003 (State Bar Court case No.
21 01-O-03956);
- 22 3. Respondent comply with certain probation conditions, including, but not limited to:
 - 23 a. Submitting quarterly reports to the Office of Probation on each January 10,
24 April 10, July 10 and October 10 of the probationary period;
 - 25 b. Submitting quarterly certificates from Respondent and/or a certified public
26 accountant or other financial professional if Respondent possessed client
27 funds during the reporting period, or, in the alternative, a statement under
28 penalty of perjury that Respondent did not possess any client funds for the

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reporting period; and

- c. Maintaining a written ledger for each client on whose behalf funds were held, a written journal for each client trust fund account if Respondent possessed client funds during the reporting period, and a monthly reconciliation of the total balances of the account.

Notice of the SCO was properly served upon Respondent in the manner prescribed by California Rules of Court, rule 24(a), at Respondent's official address in accordance with Business and Professions Code section 6002.1.²

C. Probation Violations

On November 26, 2003, the State Bar sent a letter to Respondent at his official address, reminding him of the probation conditions.

On April 14, 2004, the State Bar sent another letter to Respondent, again reminding him of the probation conditions. The letter also advised him that he had not indicated whether he possessed client funds during the reporting period and that his next reporting period was July 10, 2004. The November 2003 and April 2004 letters were not returned as undeliverable.

Between April and July 2004, Respondent communicated with Lydia Dineros, Probation Deputy for the Office of Probation. On April 16, Respondent promised to submit a financial condition certificate regarding client funds by May 20, 2004. On July 28, Dineros advised him that he was still delinquent with his April and July financial certificates and with his July 2004 quarterly report. Respondent informed her that he would file a motion to extend time to comply with the probation conditions. However, Dineros advised him that if the motion was not filed, she would refer the matter for probation revocation proceedings. Respondent did not file such a motion for extension of time or submit the overdue report and certificates.

In his September 22, 2004, opposition to motion to revoke probation, Respondent declared that he had filed the July 10, 2004 quarterly report and that he had misunderstood his financial conditions reporting requirements and would immediately comply with the reporting.

²References to sections are to the Business and Professions Code.

1 On September 23, October 22, and November 8, 2004, the State Bar repeatedly requested
2 Respondent and his counsel to submit a copy of the July 10, 2004, quarterly report that Respondent
3 claimed to have previously submitted and all delinquent financial reports.

4 Finally, on November 15, 2004, the State Bar received a quarterly report from Respondent for
5 the July 10, 2004, reporting period. But it was executed by Respondent on November 12, 2004.

6 On December 1, 2004, the State Bar wrote to Respondent's counsel, again requesting that
7 Respondent submit all delinquent financial reports.

8 On December 9, Respondent submitted a declaration and statement regarding reconciliation
9 of his client trust account to the State Bar. Respondent admitted that during the probationary period,
10 he did not maintain proper ledgers or journals regarding the possession of client funds nor had he
11 reconciled his client trust account on a monthly basis. Respondent further declared that he did not
12 promptly disburse the client funds in six client matters from his trust account as required. However,
13 he took corrective action and disbursed about \$17,661 on December 8, 2004.

14 Respondent failed to do the following:

- 15 1. Submit the quarterly report due July 10, 2004;
- 16 2. Submit the certificates regarding the financial conditions due April 10 and July 10,
17 2004; and
- 18 3. Maintain a written ledger for each client on whose behalf funds were held, a written
19 journal for each client trust fund account if Respondent possessed client funds during
20 the reporting period and a monthly reconciliation of the total balances of the account.

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

24 Section 6093, subdivision (b), provides that violation of a probation condition constitutes
25 cause for revocation of any probation then pending, and may constitute cause for discipline. Section
26 6093, subdivision (c), provides that the standard of proof is the preponderance of the evidence.

27 Therefore, the State Bar has demonstrated by a preponderance of the evidence that Respondent
28 wilfully violated the probation conditions ordered by the Supreme Court in its November 18, 2003,

1 order. Respondent failed to timely file the written quarterly report due July 10, 2004, and to submit
2 the financial reports due April 10 and July 10, 2004.

3 As a result, the revocation of Respondent's probation in California Supreme Court case No.
4 S118405 is warranted.

5 **IV. Mitigating and Aggravating Circumstances**

6 **A. Mitigation**

7 No clear and convincing evidence in mitigation was presented. (Rules Proc. of State Bar, tit.
8 IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)³

9 **B. Aggravation**

10 There are several aggravating factors. (Std. 1.2(b).)

11 Respondent has one prior record of discipline. (Std. 1.2(b)(i).) On December 18, 2003, in
12 the underlying matter, Respondent, upon stipulation, was suspended for two years, stayed, and placed
13 on probation for two years, on condition that he be actually suspended for 75 days, for his misconduct
14 in one client matter, including dishonesty, misappropriation, failure to promptly return client's
15 property, and failure to cooperate with the State Bar. (Supreme Court case No. S118405, State Bar
16 Court case No. 01-O-03956).

17 Respondent committed multiple acts of wrongdoing, including failing to submit reports due
18 April 10 and July 10, 2004. (Std. 1.2(b)(ii).)

19 Respondent's misconduct was clearly followed by uncharged probation violation. (Std.
20 1.2(b)(iii).) Specifically, Respondent failed to promptly disburse client funds from the client trust
21 account, maintain proper ledgers and accounting and reconcile client funds on a monthly basis, under
22 the probation condition regarding client funds and under rule 4-100 of the Rules of Professional
23 Conduct. In fact, Respondent admitted that he did not promptly disburse \$17,661 of client funds and
24 that he had to deposit personal funds into the client trust account to balance his client trust account.

25 Respondent demonstrated indifference toward rectification of or atonement for the
26 consequences of his misconduct. (Std. 1.2(b)(v).) He failed to comply with probation conditions

27
28 ³All further references to standards are to this source.

1 despite repeated requests to file the reports from the State Bar. He finally complied until some eight
2 months later, after this motion to revoke his probation was filed and after a trial date had been set for
3 this proceeding.

4 Respondent displayed a lack of candor to the State Bar by claiming that he had filed the July
5 10 quarterly report when in fact he did not do so until November 12, 2004, which is also an
6 aggravating factor. (Std. 1.2(b)(vi).)

7 V. Discussion

8 Public protection and attorney rehabilitation are the primary goals of disciplinary probation.
9 (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.)

10 “[T]here has been a wide range of discipline imposed for probation violations from merely
11 extending probation ... to a revocation of the full amount of the stayed suspension and imposition of
12 that amount as an actual suspension.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State
13 Bar Ct. Rptr. 567, 573.)

14 In determining the level of discipline to be imposed, the court must consider the “total length
15 of stayed suspension which could be imposed as an actual suspension and the total amount of actual
16 suspension earlier imposed as a condition of the discipline at the time probation was granted.” (*In*
17 *the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. 525, 540.) The extent of the discipline is
18 dependent, in part, on the nature of the probation violation and its relationship to Respondent’s prior
19 misconduct. (*Ibid.*)

20 Here, Respondent’s prior misconduct involved misrepresentation and misappropriation
21 regarding settlement disbursement in one client matter, for which he was actually suspended for 75
22 days with a two-year stayed suspension and a two-year probation. In the instant matter, the primary
23 probation violation found was his failure to comply with the rehabilitation conditions, to which he
24 specifically stipulated. He has failed to file one quarterly report, submit the financial conditions
25 report regarding client funds, promptly disburse client funds, and reconcile client trust account on a
26 monthly basis.

27 “[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney
28 probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept.

1 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In
2 addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards
3 the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)

4 Moreover, “an attorney who wilfully violates a significant condition of probation, such as
5 restitution, can anticipate actual suspension as the expected result, absent compelling mitigation
6 circumstances.” (*In the Matter of Gorman, supra*, 4 Cal. State Bar Ct. Rptr. 567, 574.) Here,
7 Respondent’s probation violations and failure to adequately maintain ledgers for his client trust
8 account and to promptly disburse client funds, despite his belated efforts to comply with the
9 conditions, warrant significant discipline. He had no compelling mitigating evidence.

10 The State Bar contends that the full amount of stayed suspension of two years should be
11 imposed on the grounds that (1) Respondent’s probation violations are significantly related to his
12 prior misconduct; and (2) the violations raise serious concern about the need for public protection and
13 for Respondent’s rehabilitation.

14 Respondent, on the other hand, argues that his violations are reporting in nature and not
15 directly dangerous to the client. He further claims that he has obtained a greater understanding of his
16 fiduciary duty as an attorney after having attended the State Bar Ethics School Client Trust
17 Accounting School. Thus, he urges a period of an actual suspension not to exceed 60 days, citing
18 three supporting cases – *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr.
19 567; *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678; and *In the Matter*
20 *of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

21 In *In the Matter of Gorman*, the attorney was actually suspended for 30 days with a two-year
22 probation and a two-year stayed suspension for violating his probation conditions by failing to timely
23 make restitution payment and timely attend the State Bar’s Ethics School.

24 In *In the Matter of Laden*, th attorney was actually suspended for 90 days and until he makes
25 restitution for his numerous untimely restitution payments to a single client and several delinquent
26 quarterly probation reports. The attorney had four prior records of discipline, but this was the third
27 matter involving Respondent’s failure to make timely restitution to the same client. But for his strong
28 mitigating evidence, including financial hardship, good faith efforts, cooperation with the client,

1 recognition of the seriousness of his wrongdoing and community service, the Review Department
2 would have recommended more than a 90-day actual suspension.

3 In *In the Matter of Howard*, another probation revocation matter, the attorney was actually
4 suspended for one year because he failed to submit two quarterly probation reports, to timely deliver
5 financial records to a former client's accountant, and defaulted in the disciplinary proceeding. The
6 attorney's lack of cooperation with the State Bar was a serious concern.

7 Respondent's misconduct is less serious than that of *Howard* in that Respondent has
8 participated in these proceedings and did not completely abandon his probationary duties since he did
9 file his quarterly report and financial reports, albeit late. However, his misconduct is more serious
10 than that of *Gorman*. While the severity of his violations is similar to that of *Laden*, Respondent did
11 not have the compelling mitigating circumstances as found in *Laden*.

12 Although significant discipline is warranted for Respondent's probation violations, the court
13 does not believe that imposing the entire period of stayed suspension is necessary to achieve the goals
14 of attorney disciplinary probation. The State Bar's recommendation that Respondent's probation be
15 revoked without further conditions is inadequate and that he be actually suspended for two years, the
16 entire original period of stayed suspension, is excessive.

17 Nevertheless, the court is concerned with Respondent's inadequate maintenance of his client
18 trust account. While Respondent asserts that he has approached his fiduciary duty to his clients with
19 more diligence and that he recognizes his failure to promptly disburse client funds, Respondent would
20 benefit by repeating the State Bar Ethics School Client Trust Accounting School. His bookkeeping,
21 as evidenced by his declaration and statement regarding reconciliation of his client trust account, is
22 sloppy and easily susceptible to errors. Moreover, "the repeated need of the State Bar to intervene
23 actively to seek [R]espondent's compliance with duties he voluntarily undertook was inconsistent
24 with the self-governing nature of probation as a rehabilitative part of the attorney disciplinary
25 system." (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.) The
26 State Bar had to repeatedly remind and pressure Respondent to submit the financial reports before he
27 finally complied eight months later.

28 The court finds good cause for granting the State Bar's motion to revoke Respondent's

1 probation and concludes that part of the period of the stayed suspension be imposed. Balancing all
2 relevant facts and circumstances to reach the appropriate recommendation of degree of discipline, the
3 court finds that a 90-day actual suspension is sufficient to achieve the goals of attorney disciplinary
4 probation.

5 The State Bar recommends that Respondent be placed on involuntary inactive status under
6 section 6007(d) for failing to comply with the terms of his disciplinary probation. However, it is
7 possible that if Respondent was placed on involuntary inactive status, by the time the Supreme Court
8 order imposing discipline in this matter became effective, Respondent would have been precluded
9 from practicing law for a longer period than the recommended discipline. Therefore, based on the
10 short period of actual suspension recommended, the court denies the State Bar's request to enroll
11 Respondent involuntarily inactive under section 6007(d).

12 VI. Recommended Discipline

13 Accordingly, the court recommends as follows:

- 14 1. That the probation of Respondent **JUAN CHACON** previously ordered in Supreme Court
15 case No. S118405 (State Bar Court case No. 01-O-03956) be revoked;
- 16 2. That the stay of execution of the previous suspension be lifted;
- 17 3. That Respondent be suspended from the practice of law for one year, that said suspension be
18 stayed;
- 19 4. That Respondent be placed on probation for two years on the condition that Respondent be
20 actually suspended from the practice of law for 90 days;
- 21 5. During the probation period, Respondent must comply with the State Bar Act and the Rules
22 of Professional Conduct;
- 23 6. Respondent must submit written quarterly reports to the Office of Probation on each January
24 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury,
25 Respondent must state whether Respondent has complied with the State Bar Act, the Rules
26 of Professional Conduct, and all conditions of probation during the preceding calendar
27 quarter. If the first report will cover less than 30 days, that report must be submitted on the
28 next following quarter date, and cover the extended period.

1 In addition to all quarterly reports, a final report, containing the same information, is due no
2 earlier than 20 days before the last day of the probation period and no later than the last day
3 of the probation period;

4 Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and
5 truthfully, any inquiries of the Office of Probation, which are directed to Respondent
6 personally or in writing, relating to whether Respondent is complying or has complied with
7 the conditions contained herein;

8 7. Within 10 days of any change, Respondent must report to the Membership Records Office of
9 the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Office
10 of Probation, all changes of information, including current office address and telephone
11 number, or if no office is maintained, the address to be used for State Bar purposes, as
12 prescribed by section 6002.1 of the Business and Professions Code;

13 8. Reporting requirements.

14 a. If Respondent possesses client funds at any time during the period covered by a
15 required quarterly report, Respondent must file with each required report a certificate
16 from Respondent and a certified public accountant or other financial professional
17 approved by the Office of Probation, certifying that: Respondent has maintained a
18 bank account in a bank authorized to do business in the State of California, at a branch
19 located within the State of California, and that such account is designated as a "Trust
20 Account" or "Client's Funds Account"; and Respondent has kept and maintained the
21 following:

- 22 i. a written ledger for each client on whose behalf funds are held that sets forth:
- 23 1. the name of such client,
 - 24 2. the date, amount, and source of all funds received on behalf of such
25 client,
 - 26 3. the date, amount, payee and purpose of each disbursement made on
27 behalf of such client, and
 - 28 4. the current balance for such client;

- 1 ii. a written journal for each client trust fund account that sets forth:
 - 2 1. the name of such account,
 - 3 2. the date, amount, and client affected by each debit and credit, and
 - 4 3. the current balance in such account;
- 5 iii. all bank statements and canceled checks for each client trust account; and
- 6 iv. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there
- 7 are any differences between the monthly total balances reflected in (i), (ii), and
- 8 (iii) above, the reason for the differences, and that Respondent has maintained
- 9 a written journal of securities or other properties held for a client that
- 10 specifies:
 - 11 1. each item of security and property held;
 - 12 2. the person on whose behalf the security or property is held;
 - 13 3. the date of receipt of the security or property;
 - 14 4. the date of distribution of the security or property; and
 - 15 5. the person to whom the security or property was distributed.
- 16 b. If Respondent does not possess any client funds, property or securities during the
- 17 entire period covered by a report, Respondent must so state under penalty of perjury
- 18 in the report filed with the Office of Probation for that reporting period. In this
- 19 circumstance, Respondent need not file the accountant's certificate described above.
- 20 c. The requirements of this condition are in addition to those set forth in rule 4-100 of
- 21 the Rules of Professional Conduct;
- 22 9. Within one year of the effective date of the discipline herein, Respondent must provide to the
- 23 Office of Probation satisfactory proof of attendance at a session of the Ethics School, given
- 24 periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-
- 25 1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test
- 26 given at the end of that session. Arrangements to attend Ethics School must be made in
- 27 advance by calling (213) 765-1287, and paying the required fee. This requirement is separate
- 28 from any Minimum Continuing Legal Education Requirement (MCLE), and Respondent will

1 not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201);
2 10. Within one year of the effective date of the discipline herein, Respondent must supply to the
3 Office of Probation satisfactory proof of attendance at a session of the Ethics School Client
4 Trust Accounting School, within the same period of time, given periodically by the State Bar
5 at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill
6 Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that
7 session. Arrangements to attend Ethics School Client Trust Accounting School must be made
8 in advance by calling (213) 765-1287, and paying the required fee. This requirement is
9 separate from any Minimum Continuing Legal Education Requirement (MCLE), and
10 Respondent will not receive MCLE credit for attending Trust Accounting School. (Rules
11 Proc. of State Bar, rule 3201);

12 11. The period of probation will commence on the effective date of the order of the Supreme
13 Court imposing discipline in this matter; and

14 12. At the expiration of the period of this probation, if Respondent has complied with all the
15 terms of probation, the order of the Supreme Court suspending Respondent from the practice
16 of law for one year that is stayed will be satisfied and that suspension must be terminated.

17 It is also recommended that the Supreme Court order Respondent to comply with California
18 Rules of Court, rule 955, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective
19 date of its order imposing discipline in this matter. Wilful failure to comply with the provisions of
20 rule 955 may result in revocation of probation; suspension; disbarment; denial of reinstatement;
21 conviction of contempt; or criminal conviction.⁴

22 It is not recommended that Respondent be ordered to take and pass the Multistate Professional
23 Responsibility Examination as he was previously ordered to do so in S118405. Failure to pass the
24 MPRE within the specified time results in actual suspension by the Review Department, without
25 further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State Bar,
26 rule 321(a)(1) and (3).)


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28 ⁴Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify.
(*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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VII. Costs

The court recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and paid in accordance with section 6140.7.

Dated: May 13, 2005



PAT McELROY
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 May 13, 2005, I deposited a true copy of the following document(s):

**ORDER GRANTING MOTION TO REVOKE PROBATION , filed MAY 13,
2005**

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

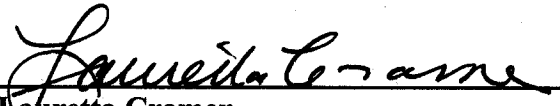
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**EDWARD O. LEAR
CENTURY LAW GROUP
5200 W CENTURY BLVD #940
LOS ANGELES CA 90045**

- 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 San Francisco, California, on **May 13, 2005**.


Laurette Cramer
Case Administrator
State Bar Court