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THE STATE BAR COURT  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No. 05-PM-00118-PEM
<b>ROBERT JAMES LAFRANCHI,</b>	)	<b>ORDER GRANTING MOTION TO</b>
<b>Member No. 57553,</b>	)	<b>REVOKE PROBATION AND FOR</b>
<b>A Member of the State Bar.</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>

**I. Introduction**

In this probation revocation proceeding, Respondent **ROBERT JAMES LAFRANCHI** is charged with violating his probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (Office of Probation) 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. The court recommends, among other things, that Respondent's probation be revoked, that the previous stay of execution of the one year suspension be lifted, and that Respondent be actually suspended from the practice of law for one year.

**II. Pertinent Procedural History**

On January 10, 2005, the Office of Probation 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.<sup>1</sup> The motion was mailed to Respondent's official membership records address.

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<sup>1</sup>References to rules are to the Rules of Procedures of the State Bar.

1 Respondent did not file a response within 20 days of the service of the motion, as required by rule  
2 563(b)(1).

3 The court took this matter under submission on February 10, 2005.

### 4 **III. Findings of Fact and Conclusions of Law**

5 All factual allegations contained in the motion to revoke probation and supporting documents  
6 are deemed admitted upon Respondent's failure to file a response. (Rules Proc. of State Bar, rule  
7 563(b)(3).)

#### 8 **A. Jurisdiction**

9 Respondent was admitted to the practice of law in California on December 19, 1973, and has  
10 since been a member of the State Bar of California.

#### 11 **B. Probation Conditions in Supreme Court Case No. S117045**

12 On September 18, 2003, in Supreme Court case No. S117045 (SCO), the California Supreme  
13 Court ordered that:

- 14 1. Respondent be suspended from the practice of law for one year, that execution of the  
15 suspension be stayed;
- 16 2. Respondent be placed on probation for two years, on the condition that he be actually  
17 suspended for 60 days, as recommended by the Hearing Department of the State Bar  
18 Court in its order approving stipulation filed May 1, 2003 (State Bar Court case No.  
19 02-H-15827);
- 20 3. Respondent comply with certain probation conditions, including, but not limited to:
  - 21 a. Submitting quarterly reports to the Office of Probation on each January 10,  
22 April 10, July 10 and October 10 of the period of probation;
  - 23 b. Attending the State Bar Ethics School and passing the test given at the end  
24 of the session within one year from the effective date of discipline, and  
25 providing proof of compliance;
  - 26 c. Completing restitution to the Client Security Fund in the amount of \$1,400,  
27 plus 10% interest from January 30, 1997, by June 27, 2003, and providing  
28 proof thereof; and

1 d. Reporting a change in telephone number to Membership Records Office and  
2 the Office of Probation within ten days of such change.

3 Notice of the SCO was properly served upon Respondent in the manner prescribed by rule  
4 24(a) of the California Rules of Court at Respondent's official address in accordance with Business  
5 and Professions Code section 6002.1.<sup>2</sup>

6 **C. Probation Violations**

7 On September 29, 2003, the Office of Probation sent a letter to Respondent at his official  
8 address, reminding him of the probation conditions.

9 On March 17, 2004, the Office of Probation sent another letter to Respondent, again  
10 reminding him of the probation conditions. The letter also advised him that the Office of Probation  
11 had not received his first quarterly report or proof of restitution. The September 2003 and March  
12 2004 letters were not returned as undeliverable.

13 According to the Client Security Fund (CSF), Respondent had not reimbursed CSF as required  
14 under the SCO.

15 On December 27, 2004, and January 10, 2005, the Office of Probation tried to telephone  
16 Respondent at his official membership records telephone number but the number was disconnected.

17 Respondent failed to do the following:

- 18 1. Submit the quarterly reports due January 10, April 10, July 10 and October 10, 2004,  
19 and January 10, 2005;
- 20 2. Submit proof of his attendance at the Ethics School by October 18, 2004;
- 21 3. Submit proof of restitution to the Client Security Fund by June 27, 2003, or at any  
22 other time; and
- 23 4. Report a change in telephone number to Membership Records Office and the Office  
24 of Probation within ten days of such change.

25 Bad faith is not a requirement for a finding of culpability in a probation violation matter;  
26 "instead, a 'general purpose or willingness' to commit an act or permit an omission is sufficient."  
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28 <sup>2</sup>References to sections are to the Business and Professions Code.

1 (In the Matter of Potack (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

2 Section 6093, subdivision (b), provides that violation of a probation condition constitutes  
3 cause for revocation of any probation then pending, and may constitute cause for discipline. Section  
4 6093, subdivision (c), provides that the standard of proof is the preponderance of the evidence.

5 Therefore, the State Bar has demonstrated by a preponderance of the evidence that Respondent  
6 wilfully violated the probation conditions ordered by the Supreme Court in its September 18, 2003  
7 order. Respondent failed to file the written quarterly reports that were due January 10, April 10, July  
8 10, and October 10, 2004, and January 10, 2005, or at any other time; failed to submit proof of  
9 attending Ethics School by October 18, 2004; failed to pay restitution to CSF by June 27, 2003; and  
10 failed to report a change in telephone number to Membership Records Office and the Office of  
11 Probation within ten days of such change.

12 As a result, the revocation of Respondent's probation in California Supreme Court case No.  
13 S117045 is warranted.

14 **IV. Mitigating and Aggravating Circumstances**

15 **A. Mitigation**

16 Since Respondent did not file a response to the probation revocation motion, no evidence in  
17 mitigation was presented and none is apparent from the record. (Rules Proc. of State Bar, tit. IV,  
18 Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>3</sup>

19 **B. Aggravation**

20 In aggravation, Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

- 21 1. On June 28, 2001, Respondent, upon stipulation, was privately reprovved for his  
22 misconduct involving two clients (State Bar Court case No. 00-O-12429)<sup>4</sup> and
- 23 2. On September 18, 2003, in the underlying matter, Respondent, upon stipulation, was  
24 suspended for one year, stayed, and placed on probation for two years, on condition

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26 <sup>3</sup>All further references to standards are to this source.

27 <sup>4</sup>The court takes judicial notice of Respondent's first prior record of discipline, pursuant  
28 to Evidence Code section 452.





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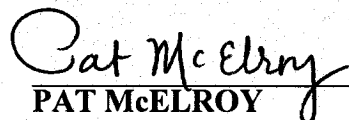
## II. Costs

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.

## VIII. Order of Involuntary Inactive Enrollment

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).<sup>5</sup> This inactive enrollment order will be effective three calendar days after the date upon which this Order is served.

Dated: March 3, 2005

  
PAT McELROY  
Judge of the State Bar Court

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<sup>5</sup>Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

**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 March 3, 2005, I deposited a true copy of the following document(s):

**ORDER GRANTING MOTION TO REVOKE PROBATION AND FOR  
INVOLUNTARY INACTIVE ENROLLMENT, filed March 3, 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:

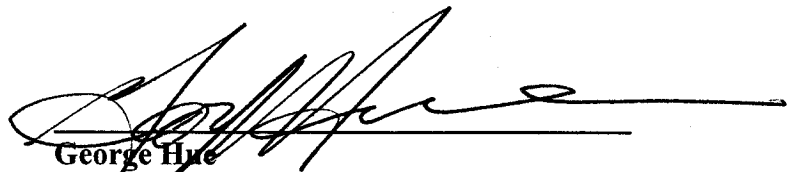
**ROBERT JAMES LaFRANCHI**  
**P O BOX 3061**  
**LOS ALTOS CA 94024-0061**

**COURTESY COPY TO:**  
**ROBERT JAMES LaFRANCHI**  
**P O BOX 355**  
**PALO ALTO CA 94302-0355**

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

**JAYNE KIM, Probation, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **March 3, 2005**.

  
**George Hue**  
Case Administrator  
State Bar Court