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PUBLIC MATTER FILED

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STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO

#### THE STATE BAR COURT

## **HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of

ROBERT JAMES LAFRANCHI,

Member No. 57553,

A Member of the State Bar.

Case No. 05-PM-00118-PEM

ORDER GRANTING MOTION TO REVOKE PROBATION AND FOR INVOLUNTARY INACTIVE ENROLLMENT

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

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

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

## III. Findings of Fact and Conclusions of Law

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

#### A. Jurisdiction

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

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

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

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

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

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

#### C. Probation Violations

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

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

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

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

Respondent failed to do the following:

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

Bad faith is not a requirement for a finding of culpability in a probation violation matter; "instead, a 'general purpose or willingness' to commit an act or permit an omission is sufficient."

<sup>&</sup>lt;sup>2</sup>References to sections are to the Business and Professions Code.

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

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

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

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

## IV. Mitigating and Aggravating Circumstances

## A. Mitigation

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

#### B. Aggravation

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

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

<sup>&</sup>lt;sup>3</sup>All further references to standards are to this source.

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

that he be actually suspended for 60 days, for failing to comply with his probation conditions (Supreme Court case No. S117045, State Bar Court case No. 02-H-15827).

Respondent's failure to fully participate in this proceeding is also an aggravating factor. (Std. 1.2(b)(vi).)

## V. Discussion

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

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

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

Here, Respondent's prior misconduct involved two client matters and probation violations. In the instant matter, the primary probation violation found was his failure to comply with the rehabilitation conditions, to which he specifically stipulated. He has failed to file the quarterly reports, attend Ethics School, failed to make restitution, and failed to notify the State Bar of the change in his phone number.

"[A] probation 'reporting requirement permits the State Bar to monitor [an attorney probationer's] compliance with professional standards." (In the Matter of Weiner (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing Ritter v. State Bar (1985) 40 Cal.3d 595, 605.) In addition, "an attorney probationer's filing of quarterly probation reports is an important step towards the attorney's rehabilitation." (In the Matter of Weiner, supra, 3 Cal. State Bar Ct. Rptr. at p. 763.) Thus, Respondent's failure to file quarterly reports warrants significant discipline.

Moreover, "an attorney who wilfully violates a significant condition of probation, such as restitution, can anticipate actual suspension as the expected result, absent compelling mitigation circumstances." (*In the Matter of Gorman, supra,* 4 Cal. State Bar Ct. Rptr. 567, 574.) There is no indication of Respondent's efforts to comply with the conditions.

In consideration of Respondent's violation of probation conditions, the similarity of this misconduct with prior misconduct and his lack of participation in these proceedings and continuing noncompliance with probation conditions despite the Office of Probation's efforts to secure it, the court does not believe it worthwhile to recommend again placing him on probation subject to conditions.

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

Hence, the court finds good cause to GRANT the motion to revoke Respondent's probation and recommends that the entire period of his stayed suspension be imposed.

# VI. Recommended Discipline

Accordingly, the court recommends as follows:

- That the probation of Respondent ROBERT JAMES LAFRANCHI previously ordered in Supreme Court case No. S117045 (State Bar Court case No. 02-H-15827) be revoked;
- 3. That the previous stay of execution of the suspension be lifted; and
- 4. That Respondent be actually suspended from the practice of law for one year.

It is also recommended that the Supreme Court order Respondent to comply with rule 955, paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination as he was previously ordered to do so in S117045.

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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.

10 Dated: March <u>3</u>, 2005

PAT McELROY

Judge of the State Bar Court

<sup>&</sup>lt;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:

[X] 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

[X] 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.

Case Administrator State Bar Court