PUBLIC MATTER

FILED
MAY 26 2005
STATE BAR COURT
CLERKS OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **MITCHEL J. SCHAPIRA,** **Member No. 67427,** A Member of the State Bar.	**Case No. 05-PM-01325-RMT** **ORDER GRANTING MOTION TO REVOKE PROBATION & ORDER OF INACTIVE ENROLLMENT**

This matter is before the Court on the motion to revoke probation that the State Bar's Office of Probation (State Bar) filed on March 14, 2005. In its motion, the State Bar charges that Respondent Mitchel J. Schapira[1] (Respondent) has violated the conditions of the disciplinary probation that the Supreme Court imposed on him in its July 2, 2003, order in *In re Mitchel J. Schapira on Discipline*, Supreme Court case number S114802 (State Bar Court case number 01-H-01776-RMT) (the Supreme Court Order). More specifically, the State Bar charges that Respondent violated the conditions of his probation by failing (1) to file his fourth, fifth, and sixth quarterly probation reports; (2) to submit proof of his attendance and completion of six hours of legal courses; and (3) to respond to the State Bar's inquiries.

In light of these charged probation violations, the State Bar requests that this Court recommend that Respondent's probation be revoked, that the stay of execution of the one-year suspension imposed on Respondent in the Supreme Court Order be lifted, that the entire one-year suspension be imposed on Respondent, and that Respondent be ordered to comply with rule 955 of

[1]Respondent was admitted to the practice of law in the State of California on December 16, 1975, and has been a member of the State Bar since that time. He has two prior records of discipline.

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the California Rules of Court. In addition, the State Bar requests that this Court order, under Business and Professions Code section 6007, subdivision (d), that Respondent be involuntarily enrolled as an inactive member of the State Bar.

The State Bar is represented by Supervising Attorney Jayne Kim. Respondent did not appear, either in person or by counsel.

As discussed *post*, except for the charge that Respondent failed to respond to the State Bar's inquiries, the Court finds by preponderance of the evidence that Respondent wilfully failed to comply with the terms of his probation as charged the motion to revoke probation. (§ 6093, subd. (c); Rules Proc. of State Bar, rule 561.) In light of this fact, the Court will grant the State Bar's motion, make the requested recommendations, and order the requested involuntary inactive enrollment.

I. Pertinent Procedural History

A. Respondent's Probation

Under the Supreme Court Order, which became effective August 1, 2003 (Cal. Rules of Court, rule 953(a)), Respondent was placed on one year's stayed suspension and two years' probation on conditions, including a thirty-day period of actual suspension. The Supreme Court imposed this discipline, including each of the conditions of probation, on Respondent in accordance with a stipulation as to facts, conclusions of law, and disposition that he entered into with the State Bar and that this Court approved in an order filed on February 27, 2003, in State Bar Court case number 01-H-01776-RMT (the parties' February 27, 2003, stipulation).

B. Respondent's Actual Suspensions For Nonpayment of Membership Fees

The Court sua sponte notes that State Bar records indicate that, effective August 8, 1996, the Supreme Court placed Respondent on actual suspension because he failed to pay his annual State Bar membership fees and that Respondent has continuously remained on actual suspension since that time. Of course, an attorney's actual suspension for nonpayment of State Bar fees is *not* disciplinary in nature and is *not* a prior record of discipline. (Rules Proc. of State Bar, rule 216(a).)[2]

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[2]All references to Rules of Procedure are to these Rules of Procedure of the State Bar.

C. Motion to Revoke Probation

On the day it filed its motion to revoke probation (i.e., March 14, 2005), the State Bar, in accordance with section 6002.1, subdivision (c) and rule 60 of the Rules of Procedure, properly served a copy of its motion on Respondent by certified mail, return receipt requested, at Respondent's latest address shown on the official membership records of the State Bar (official address).[3]

On March 21, 2005, the State Bar Court Clerk filed a Notice of Assignment in this proceeding and properly served copies of it on the parties.[4]

Respondent's response, including any opposition, to the motion to revoke probation was to have been filed no later than April 8, 2005. (Rules Proc., rule 563(b)(1).) Respondent, however, never filed a response. Thereafter, because all the statutory and rule prerequisites were met, the Court filed an order on April 25, 2005, taking the motion under submission for decision without a hearing.[5]

II. Findings of Fact

Because Respondent did not file a response to the motion to revoke probation, the factual allegations contained in the motion and its supporting documents are deemed admitted.[6] (Rules Proc., rule 563(b)(2).) In light of these deemed admitted factual allegations, the Court finds by a

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[3]There is nothing in the record that indicates whether Respondent actually received this copy of the motion or whether the United States Postal Service (Postal Service) returned it to the State Bar as undeliverable, refused, or otherwise.

[4]The copy of this notice that the State Bar Court Clerk served on Respondent at his official address by First Class Mail was returned undelivered to clerk by the Postal Service on March 26, 2005. On the front of the envelope of that copy, the Postal Service marked "Return to Sender [¶] Not Deliverable as Addressed [¶] Unable to Forward."

[5]The copy of this order that the State Bar Court Clerk served on Respondent at his official address by First Class Mail was returned undelivered to the clerk by the Postal Service on May 5, 2005. On the front of the envelope of that copy, the Postal Service marked: "Return to Sender [¶] No Such Number [¶] Unable to Forward."

[6]The motion's supporting documents, all of which are attached to the motion, are a declaration of State Bar Probation Deputy Eddie Esqueda and exhibits 1, 2, and 3. Each of these documents is admitted into evidence in accordance with rule 563(e) of the Rules of Procedure.

preponderance of the evidence that the record establishes, as of date on which the State Bar filed its motion to revoke probation with its supporting documents (i.e., March 14, 2005), the following facts.

A. Quarterly Probation Reports

One of the probation conditions imposed on Respondent under the Supreme Court Order requires that Respondent submit to the State Bar, on every January 10, April 10, July 10, and October 10, written probation reports stating under penalty of perjury under the laws of this state whether he has complied with the Rules of Professional Conduct, the State Bar Act, and all the conditions of his probation during the preceding calender quarter.

1. Respondent's First, Second, and Third Probation Reports

Even though not relevant to Respondent's culpability on the charged probation violations, the following findings regarding Respondent's failure to timely file his first three probation reports -- which were due October 10, 2003; January 10, 2004; and April 10, 2004 -- are relevant to the issue of discipline.

When Respondent failed to file his first quarterly probation report, a State Bar probation deputy mailed Respondent, as a courtesy, a reminder letter on December 22, 2003. However, Respondent still did not promptly thereafter file his first probation report. Nor did he otherwise respond to the probation deputy's letter until January 30, 2004, when he telephoned the deputy and asked for another form quarterly probation report.

Even after the probation deputy mailed Respondent the form he requested, Respondent still failed to promptly file his first probation report. In addition, Respondent failed to file his second and third probation reports. Thereafter, on April 29, 2004, as a further courtesy to Respondent, the probation deputy telephoned and spoke with Respondent. During that telephone conversation, the probation deputy reminded Respondent that he needed to file his first three probation reports and notified Respondent that, if he did not file the reports by May 12, 2004, the deputy would refer his failures to file the reports for a probation revocation proceeding.

It was only after the probation deputy telephoned and spoke with Respondent on May 12, 2004, that Respondent finally submitted his first three probation reports. However, instead of properly faxing the three reports to State Bar's Office of Probation, Respondent improperly faxed

them to the State Bar's Office of the Chief Trial Counsel. Accordingly, on May 14, 2004, as yet another courtesy to Respondent, the deputy telephoned Respondent and left him a message for him that included the fax number for the Office of Probation.

2. Respondent's Fourth, Fifth, and Sixth Probation Reports

As noted *ante*, in the motion to revoke probation, Respondent is charged with failing to file his fourth, fifth, and sixth quarterly probation reports, which were due on July 10, 2004; October 10, 2004, and January 10, 2005, respectively.

Respondent failed to file his fourth probation report. Therefore, on September 21, 2004, as a courtesy to Respondent, the probation deputy telephoned Respondent and left a message asking Respondent to call him. Respondent, however, did not call the deputy; nor did Respondent promptly file his fourth probation report after that telephone call and message.

Respondent also failed to file his fifth probation report. Therefore, on November 17, 2004, as yet a further courtesy to Respondent, the probation deputy telephoned Respondent and left a message Respondent to call him. Respondent, however, did not call the deputy; nor did Respondent promptly file either his fourth or his fifth probation report after that telephone call and message.

Respondent also failed to filed his sixth probation report. Therefore, on January 19, 2004, as yet another courtesy to Respondent, the probation deputy telephoned Respondent two times, but was unable to leave Respondent a message because Respondent's telephone number was busy both times the deputy telephoned. Notwithstanding all of the foregoing contacts from the State Bar, Respondent has still never filed his fourth, fifth, and sixth probation reports.

B. MCLE Courses

Another one of the probation conditions imposed on Respondent under the Supreme Court Order required that, between the date Respondent signed the parties' February 27, 2003, stipulation and "within one year of the effective date discipline," Respondent (1) attend and complete six hours of courses approved for Minimum Continuing Legal Education (MCLE) credit in California or Alaska in the areas of office management, attorney/client relations, or general legal ethics and (2) provide satisfactory proof of his completion of those six hours to the State Bar. Under that condition, Respondent was required to submit proof of his completion of the six hours of MCLE

courses no later than August 1, 2004 (one year of the August 1, 2003, effective date of the discipline imposed in that matter). However, Respondent has never submitted any proof that he has completed any of these six hours of MCLE courses.

C. Responding to Inquiries of State Bar

Another probation conditions imposed on Respondent under the Supreme Court Order requires Respondent, subject to the assertion of any applicable privilege, to answer fully, promptly, and truthfully any inquiry of the State Bar "directed to Respondent *personally or in writing* relating to whether Respondent is complying or has complied with the probation conditions." (Italics added.) As noted *ante*, in the motion to revoke probation, Respondent is charged with willfully violating this probation condition. However, the State Bar has not specified, either in the motion to revoke probation or otherwise, how Respondent allegedly violated this probation condition. And the record does not contain any facts indicating how Respondent might have plausibly violated the condition. Accordingly, the Court is unable to make any further finding of fact with regard to this condition.

III. Conclusions of Law

To establish culpability for a probation violation charged in a probation revocation proceeding brought under section 6093 and rule 560 et seq. of the Rules of Procedure, the State Bar must prove by a preponderance of the evidence the text of probation condition that the attorney is charged with violating, that the attorney had notice of that probation condition, and that the attorney willfully failed to comply with it. (*In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244, 251-252.) Willfulness in this context does not require bad faith; rather it requires only a " 'general purpose or willingness' to commit an act or permit an omission." (*In the Matter of Potack* (Review Dept. 1991)1 Cal. State Bar Ct. Rptr 525, 536.) Moreover, at least with respect to probation violations that are charged in probation revocation proceedings, it is clear that substantial compliance with a probation condition is not a defense to charged violation. (*Id.* at pp. 536-537.)

The Court finds that the State Bar proved the text of each of the three probation conditions that Respondent is charged with violating. The State Bar did this when it attached, to the motion to revoke probation as a supporting document, a copy of the parties' February 27, 2003, stipulation, which contains the text of all of the conditions of probation imposed on Respondent under the

Supreme Court Order.

In addition, the Court finds that Respondent had notice of each of the three probation conditions that he is charged with violating, The State Bar did this when, inter alia, it established that the probation deputy repeatedly contacted Respondent about failures to file his quarterly probation reports.

The Court further finds that, in willful violation of the probation condition requiring him to file written quarterly probation reports, Respondent failed to file his fourth, fifth, and sixth reports, which were due on July 10, 2004; October 10, 2004; and January 10, 2005, respectively.

The Court also finds that, in willful violation of the probation condition requiring him to attend and complete six hours of specified MCLE courses and to provide satisfactory proof that he did so no later than August 1, 2004, Respondent failed to provide the required proof.

However, the Court is unable to find that Respondent willfully violated the probation condition requiring him to answer any inquiry that the State Bar directs to Respondent personally (i.e., in person)[7] or in writing relating to whether he is complying or has complied with the probation conditions. First, as noted *ante*, the State Bar has not alleged how Respondent allegedly violated that condition. In other words, the State Bar has not alleged that (1) that it directed a specific inquiry to Respondent personally (i.e., in person) or in writing relating to whether he is complying or has complied with the probation conditions and (2) that Respondent failed to answer that specific inquiry fully, promptly, or truthfully. Nor does the record otherwise clearly establish any such allegations.

The fact that Respondent never returned the probation deputy's telephone calls in accordance with the messages the deputy left on September 21, 2004, and November 17, 2004, does not establish that Respondent willfully violated this condition. First, the probation deputy's declaration, which is attached as a supporting document to the motion to revoke probation, does not indicate much less establish that, when the deputy telephoned Respondent on those two occasions, the deputy directed a specific inquiry to Respondent relating to whether he is complying or has complied with

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[7]In Webster's Ninth New Collegiate Dictionary (1989) page 878, the word "personally" is defined as "in person."

a condition of his probation. In fact, her declaration establishes that, when she made those two telephone calls, she did so as a courtesy to Respondent to remind him to file his quarterly probation reports and not for the purpose of directing a specific inquiry to Respondent regarding whether he is complying or has complied with the conditions of his probation. When the probation deputy telephoned Respondent on September 21, 2004, she and the State Bar already knew that Respondent had not complied with his probation conditions because he had not filed his fourth probation report, due on July 10, 2004. Likewise, when the deputy telephoned Respondent again on November 17, 2004, the deputy and the State Bar knew that Respondent had not complied with his probation conditions because Respondent had not filed either his fourth or his fifth probation report, which were due July 10, 2004, and October 10, 2004, respectively.

Second and most important, even assuming arguendo that the probation deputy made a specific inquiry to Respondent relating to his probation compliance in the messages the deputy left for Respondent on September 21, 2004, and November 17, 2004, Respondent was not required to answer the inquiries because they were not directed to Respondent personally (i.e., in person) or in writing. Nonetheless, as discussed *post*, Respondent's failures to respond to these two courtesy telephone calls are aggravating circumstances.

In short, the four probation violations found *ante* warrant the revocation of Respondent's probation as provided by section 6093, subdivision (b).

IV. Aggravating Circumstances

A. Prior Records of Discipline

Respondent has two prior records of discipline, and each of them is an aggravating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct (standards), std. 1.2(b)(i).)

1. First Prior Record

Effective November 7, 2000, Respondent was publicly reproved in State Bar Court case number 96-J-00951-CEV based on the formal record of professional discipline imposed on him by the State of Alaska, which is where Respondent has maintained his official address since, at least, April 1990. A number of terms and conditions were attached to that reproval for a period of one

year. That public reproval and the attached conditions were imposed on Respondent in accordance with a stipulation as to facts, conclusions of law, and disposition that he entered into with the State Bar on September 26, 2000, and that was approved in a State Bar Court order filed on October 16, 2000. Regrettably, because a copy of that stipulation is not in the present record, the Court is unable to determine the nature and extent of Respondent's first prior record of discipline.[8]

2. Second Prior Record

Respondent's second prior record of discipline is the Supreme Court's Order. As noted *ante*, under the Supreme Court Order, Respondent was placed on one year's stayed suspension, two years' probation, and thirty days' actual suspension.[9] That discipline was imposed on Respondent because he willfully violated his duty, under rule 1-110(A) of the Rules of Professional Conduct, to comply with the conditions attached to any reproval imposed on him by the State Bar Court or the Supreme Court. Specifically, Respondent violated rule 1-110(A) by failing: (1) to file *any* of the four required quarterly probation reports; (2) to timely report a change of his address; (3) to take and pass the

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[8]Even though that stipulation contains the factual details as to the nature and extent of Respondent's first prior record of discipline and even though those factually details might significantly effect this court's determination as to the appropriate level of discipline (see, e.g., *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 147 & fn. 11), the Court declines (1) to independently obtain a copy of it and then take judicial notice of it or (2) to sua sponte direct the State Bar to proffer a copy of it into evidence (cf. *In the Matter of Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888, 892). Instead, this Court will determine and "recommend only that degree of discipline, if any, which is warranted by the evidence presented" by the State Bar. (*Ibid.*) The Court does so because, inter alia, it recently corrected this identical evidentiary deficiency for the State Bar in *In the Matter of Sue E. Castrellon, a Member of the State Bar*, State Bar Court case number 04-PM-14981-RMT and, in footnote 8 on page 6 of its February 4, 2005, order granting the State Bar's motion to revoke probation in that proceeding, expressly warned the State Bar that "the Court will insist, in the future, that the State Bar fully meet its evidentiary obligations." To do otherwise would clearly risk creating an appearance that this Court has improperly changed its "role from adjudicator of the evidence presented to that of instigator of evidence production." (*In the Matter of Bouyer, supra*, 3 Cal. State Bar Ct. Rptr. at p. 892.)

[9]In that matter, the parties stipulated that Respondent would not be required to attend the State Bar's Ethics School notwithstanding the mandate to the contrary in rule 290 of the Rules of Procedure. This Court construes the parties stipulated waiver of rule 290 in that matter to continue in any proceeding to revoke the probation imposed on Respondent in the Supreme Court Order because the State Bar has not requested that this Court apply rule 290 when making its discipline recommendation in the present proceeding. Accordingly, the Court will not apply rule 290 herein.

Multistate Professional Responsibility Examination (MPRE), and (4) to attend and complete six hours of MCLE courses.

The aggravating circumstances found in Respondent's prior record of discipline were: (1) one prior record of discipline; (2) indifference established by Respondent's failure to comply with *any* of the conditions attached to his public reproval even though he knew of and stipulated to them; and (3) multiple acts of misconduct. The only mitigating circumstance found in that prior record was family problems based on Respondent's claim that his failure to comply with reproval's conditions was at least partly due to the fact that he was dealing with his mother's illness and her subsequent death.

B. Multiple Acts of Misconduct

The fact that Respondent has been found culpable of four separate acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

C. Indifference Towards Rectification of Misconduct

As the Court found *ante*, Respondent failed to respond to the telephone messages that the probation deputy left for Respondent on September 17, 2004, and November 17, 2004, after he failed to file his fourth and fifth quarterly probation reports. Respondent's failures to either call the deputy or to promptly file his probation reports in response to her messages are aggravating circumstances under standard 1.2(b)(v) because they clearly demonstrate Respondent's indifference towards rectification of his failure to file his fourth and fifth probation reports.

V. MITIGATING CIRCUMSTANCES

There is no evidence of any mitigating circumstance in the record.

VI. DISCIPLINE DISCUSSION

Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) In determining the level of discipline, 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. at p. 540.)

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and 1.7(a) requires that the court recommend greater discipline in this matter than that imposed in the underlying disciplinary proceeding.[10] However, the extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and Respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) Furthermore, "[t]he violation of a probation condition significantly related to the attorney's prior misconduct merits the greatest discipline, especially if the violation raises a serious concern about the need to protect the public or shows the attorney's failure to undertake steps toward rehabilitation." (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151.) Furthermore, to the extent that an attorney repeatedly violates the same condition of probation, as Respondent did with respect to his quarterly reporting probation condition, the gravity of each violation increases. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531.)

In this matter, the Court is concerned about Respondent's failure to comply with the above-mentioned conditions of his probation and his failure to participate in this probation revocation proceeding. "[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

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[10]Ordinarily, the Court would be bound to apply standard 1.7(b), which provides that, if an attorney has two prior records of discipline, the degree of discipline is to be disbarment unless the most compelling mitigating circumstances predominate. However, because of the limitation on the level of discipline available for probation violations that the State Bar charges in probation revocation proceedings under section 6093, such as the present one, the review department has held that standard 1.7(b) does not apply in probation revocation proceedings. (*In the Matter of Carr, supra*, 2 Cal. State Bar Ct. Rptr. at p. 257, fn. 13.) Of course, standard 1.7(b) is applicable to probation violations that the State Bar charges in original disciplinary proceedings under section 6068, subdivision (k) because there is no limitation on the level of discipline available for probation violations in original disciplinary proceedings. Thus, Respondent is advised that, if he violates his probation again and the State Bar charges the violation in an original disciplinary proceeding, the violation may result in his disbarment under standard 1.7(b).

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.)

Finally, and most importantly, in light of the facts that the Supreme Court placed Respondent on two years' probation because he failed to comply with *a single* condition that the State Bar Court had attached to the public reproval it imposed on him effective November 7, 2000, and that, as found *ante*, Respondent did not file any of his first three quarterly reports until after the probation deputy repeatedly contacted him and then warned him that he could be subject to a probation revocation proceeding if he did not file them, the Court must conclude that Respondent's "continued unwillingness or inability to comply with the conditions of probation imposed on him by a Supreme Court order 'demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney's fitness to practice law and serve as an officer of the court. [Citation.].' [Citation.]" (*In the Matter of Tiernan, supra*, 3 Cal. State Bar Ct. Rptr. at p. 531.) Accordingly, the Court further concludes that Respondent's present probation violations warrant one year's actual suspension, which the greatest level of discipline that the Court may recommend under rule 562 of the Rules of Procedure.

The State Bar has not requested that the Court recommend that Respondent be ordered to take and pass the MPRE. Moreover, Respondent was ordered to take and pass it in the Supreme Court Order. Moreover, all of the misconduct found in this present proceeding are probation violations, a subject that most likely is not tested on the MPRE. The Court concludes that a MPRE requirement is not necessary and does not recommend one.

VII. Order Granting Motion and Discipline Recommendation

The motion to revoke probation filed by the State Bar's Office of Probation on March 14, 2005, GRANTED. The Court RECOMMENDS that the probation imposed on Mitchel J. Schapira by the Supreme Court in its July 2, 2003, order in *In re Mitchel J. Schapira on Discipline*, Supreme Court case number S114802 (State Bar Court case number 01-H-01776-RMT) be revoked, that the stay of execution of the one-year suspension previously imposed on Schapira in that case be lifted, and that Schapira be actually suspended from the practice of law in the State of California for one year with credit being given for the period of time he is involuntarily enrolled as an inactive member

of the State Bar of California under the order of inactive enrollment *post* (Bus. & Prof. Code, § 6007, subd. (3)).

VIII. Rule 955 & Costs

The Court further recommends that Schapira be ordered to comply with rule 955 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's order in this matter.[11]

Finally, the Court recommends that the costs incurred by the State Bar in this matter be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be payable in accordance with Business and Professions Code section 6140.7.

IX. Order of Inactive Enrollment

The requirements for inactive enrollment under Business and Professions Code section 6007, subdivision (d)(1) have been met -- Respondent is subject to a stayed suspension, and the Court has found that he violated the conditions of his probation and is recommending that he be actually suspended from the practice of law because of those violations. Therefore, it is ordered that Mitchel J. Schapira be involuntarily enrolled as an inactive member of the State Bar of California under section 6007, subdivision (d)(1), effective upon the service of this order on the parties by the State Bar Court Clerk (Rules Proc. of State Bar, rule 564.) Unless otherwise ordered by the State Bar Court or the Supreme Court, Schapira's involuntary inactive enrollment under this order will terminate, without further court order, on the earliest of the effective date of the Supreme Court's

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[11]If the Supreme Court adopts this recommendation that Schapira be ordered to comply with rule 955, Schapira must file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, Schapira's failure to comply with rule 955 is also a ground for disbarment or suspension and for revocation of any pending probation. (Cal. Rules of Court, rule 955(d).) Schapira is advised that even though sanctions less than disbarment are authorized, disbarment is almost always ordered for an attorney's failure to comply with rule 955 in the absence of *compelling* mitigating circumstances. (See *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.)

order in this matter or one year after the service of this order. (See Bus. & Prof. Code, § 6007, subd. (d)(2); Rules Proc. of State Bar, rule 564.)

Dated: May 25, 2005.

ROBERT M. TALCOTT
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 of California. 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 May 26, 2005, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION TO REVOKE PROBATION & ORDER OF INACTIVE ENROLLMENT, filed May 26, 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 Los Angeles, California, addressed as follows:

MITCHEL J. SCHAPIRA
310 K ST #200
ANCHORAGE AK 99501

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

JAYNE KIM, A/L, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **May 26, 2005**.

Rose M. Luthi

Rose M. Luthi
Case Administrator
State Bar Court