PUBLIC MATTER

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THE STATE BAR COURT

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **MELVIN WAYNE WHITE,** **Member No. 106785,** A Member of the State Bar.	**Case No. 05-PM-02118-PEM** **ORDER GRANTING MOTION TO REVOKE PROBATION**

I. INTRODUCTION

Based upon alleged probation violations, the Office of Probation of the State Bar ("State Bar"), represented by Jayne Kim, Supervising Attorney, filed a motion pursuant to Business and Professions Code sections 6093(b) and 6093(c)[1] and rules 560 et seq. of the Rules Proc. of State Bar ("rule(s)") to revoke the probation of MELVIN WAYNE WHITE, imposed by the Supreme Court in its September 23, 2004, order in Supreme Court matter S126157 (State Bar Court case no. 02-H-15781). 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.

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 State Bar'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 Court recommends that Respondent's probation be revoked, that the previously-ordered stay be lifted and that he be actually suspended from the practice of law for 60 days.

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[1]Unless otherwise indicated, all further references to "section" refer to provisions of the Business and Professions Code.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to the practice of law in California on December 22, 1982, and has since been a member of the State Bar of California.

Probation Violations

On January 28, 2004, the State Bar Court filed and properly served on Respondent an order approving the stipulation of the parties in case no. 02-H-15781, recommending discipline consisting of stayed suspension of 60 days, and probation of one year with specified conditions.

On September 23, 2004, the California Supreme Court filed an order in case no. S126157 ("Supreme Court order") accepting the State Bar Court's recommendation and ordering Respondent to comply with the conditions of probation recommended.

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

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

(b) Subject to the assertion of applicable privileges, to respond truthfully and promptly to inquiries from the Office of Probation regarding compliance with probation conditions.

The Supreme Court order became effective on October 23, 2004, thirty days after it was entered. (Rule 953(a), California Rules of Court.) It was properly served on Respondent.[2]

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[2]Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon Respondent, rule 24(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties 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.

On September 29, 2004, a Probation Deputy of the Office of Probation wrote a letter to Respondent reminding him of the terms and conditions of his probation imposed pursuant to the Supreme Court's order. (See deputy's declaration which was submitted in support of the motion to revoke probation.) Enclosed with the letter were copies of the Supreme Court's order, the probation conditions portion of the stipulation and an instruction sheet and form to use in submitting quarterly reports. The letter advised Respondent that his first quarterly report was by January 10, 2005.

The September 29, 2004, letter was mailed to Respondent's official State Bar membership records address via the United States Postal Service with first-class postage prepaid. Neither this nor other correspondence from the Office of Probation to Respondent was returned as undeliverable.

On February 16, 2005, the Probation Deputy made an attempt to reach Respondent by telephone because his January 10 quarterly report had not been received. The deputy left a message for Respondent, asking him to call back as soon as possible.

On March 21, 2005, the deputy attempted to reach Respondent by telephone again because the delinquent quarterly report had not been received. On that same day, the deputy mailed a letter to Respondent, reminding him of the terms of his probation and requesting that he submit the January 10, 2005 quarterly report.

Respondent did not submit the January 10 quarterly report. Respondent did not respond to the telephone calls or letters of the Probation Deputy.

Respondent did not submit his second quarterly report, due April 10, 2005.

The Office of Probation had no contact with Respondent.

Conclusions of Law

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

Pursuant to Business and Professions Code section 6093(b) and (c) and rule 561, the Court concludes that the State Bar has demonstrated by a preponderance of the evidence that Respondent wilfully violated the conditions of probation ordered by the Supreme Court in its September 23,

2004, order in Supreme Court case number S126157. He has not submitted quarterly reports due on January 10, 2005 and April 10, 2005, and he has not responded to the correspondence from the Office of Probation concerning his compliance with the terms and conditions of his probation.

III. AGGRAVATING CIRCUMSTANCES

In aggravation, Respondent has two prior records of discipline. (Standard 1.2(b)(i).) As previously discussed, discipline was imposed in Supreme Court case number S126157 (State Bar Court Case No. 02-H-15781). Respondent was found to have failed to comply with conditions attached to an earlier private reproval, specifically, failure to file quarterly reports and failure to take and pass the Multistate Professional Responsibility Examination.

Effective February 16, 2002, Respondent was privately reproved. Respondent was found culpable of entering into a business transaction with a client without complying with the safeguards provided for in rule 3-300 of the Rules of Professional Conduct.

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

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

IV. MITIGATING CIRCUMSTANCES

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

V. 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.)

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.7 requires that the Court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding. However, the period of actual suspension

recommended in the instant case cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rule 562.) 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.)

The State Bar requests that Respondent's probation imposed by the Supreme Court in its September 23, 2004, order in Supreme Court matter S126157 be revoked, that the stay of execution of the suspension previously imposed be lifted, and that Respondent be actually suspended for 60 days. The Court agrees that recommending the imposition of the full amount of stayed suspension is merited.

"[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, Respondent was aware of the probation conditions. He participated in his prior disciplinary proceeding and entered into a stipulation to resolve it. Although he was repeatedly reminded about the terms and conditions of his disciplinary probation, he failed to comply with them. He has not participated in these proceedings. There is no indication that Respondent recognizes his misconduct or will comply with probation conditions. Accordingly, 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.)

Accordingly, the Court finds good cause to GRANT the motion to revoke Respondent's

probation and to recommend the imposition of substantial discipline in this matter.

DISCIPLINE RECOMMENDATION

The Court hereby recommends to the Supreme Court that Respondent's probation in Supreme Court matter S126157 (State Bar Court case no. 02-H-15781) be revoked, that the previous stay of execution of the suspension be lifted, and that Respondent MELVIN WAYNE WHITE, be actually suspended from the practice of law for 60 days.

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination since he was ordered to do so in connection with the underlying disciplinary case.

COSTS

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

ORDER REGARDING INACTIVE ENROLLMENT

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

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

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

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

Dated: June 22, 2005

Pat McElroy

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 June 22, 2005, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION TO REVOKE PROBATION, filed June 22, 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:

MELVIN WAYNE WHITE
P O BOX 1132
SALEM VA 24153

[X] 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 San Francisco, California, on **June 22, 2005**.

George Hue
Case Administrator
State Bar Court