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THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)
LAWRENCE A. MERRYMAN,)
Member No. 28984,)
A Member of the State Bar.)

Case No. 05-PM-03111-PEM

ORDER GRANTING MOTION TO
REVOKE PROBATION AND FOR
INVOLUNTARY INACTIVE
ENROLLMENT

I. Introduction

In this probation revocation proceeding, respondent LAWRENCE A. MERRYMAN is charged with violating his probation conditions imposed by the California Supreme Court in S121225. The Office of Probation of the State Bar of California (Office of Probation) seeks to revoke his probation and to involuntarily enroll respondent as an inactive member of the State Bar.

The court finds, by a preponderance of the evidence, that respondent has violated his probation conditions and hereby grants the motion. The court recommends 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 June 29, 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.¹ The motion was mailed to respondent's official membership records address. Respondent did not file a response within 20 days of the service of the motion, as required by rule

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

1 563(b)(1) and has not requested a hearing. As a result, pursuant to rule 563(b)(3), respondent has
2 waived his right to request a hearing.

3 In light of respondent's failure to file a response, this matter was taken under submission
4 without a hearing on July 27, 2005. Respondent has not participated or appeared in these
5 proceedings, either personally or through counsel.

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

7 All factual allegations contained in the motion to revoke probation and supporting documents
8 are deemed admitted upon respondent's failure to file a response. (Rule 563(b)(3).)

9 **A. Jurisdiction**

10 Respondent was admitted to the practice of law in California on January 7, 1959, and has
11 been a member of the State Bar of California since that time.

12 **B. Probation Conditions in Supreme Court Case No. S121225**

13 On March 12, 2004, in *In re Lawrence A. Merryman on Discipline*, Supreme Court case No.
14 S121225 (SCO), the California Supreme Court ordered among other things that:

- 15 1. Respondent be suspended from the practice of law for one year, that execution of the
16 suspension order be stayed, and that he be placed on probation for one year on the
17 condition that he be actually suspended for 90 days. The period of probation is to be
18 consecutive to the period of probation ordered in Supreme Court case No. S106726;
- 19 2. Respondent take and pass the Multistate Professional Responsibility Examination
20 within one year after the effective date of its order in case No. 121225;
- 21 3. Respondent submit written quarterly reports to the Office of Probation each January
22 10, April 10, July 10, and October 10 of each year during which the probation is in
23 effect, stating under penalty of perjury that he has complied with all the provisions
24 of the State Bar Act and the Rules of Professional Conduct; and
- 25 4. Respondent reply promptly to any inquiries from the Office of Probation regarding
26 compliance with probation conditions.

27 The SCO was effective April 11, 2004.

28 Notice of the SCO was properly served upon respondent in the manner prescribed by rule

1 24(a) of the California Rules of Court at respondent's official address in accordance with Business
2 and Professions Code section 6002.1.²

3 **C. Probation Violations**

4 On April 21, 2004, the Office of Probation sent a letter to respondent at his official address
5 with enclosures including: (a) a copy of the SCO; (b) a copy of the conditions of probation; (c) a
6 copy of California Rules of Court, rule 955; and (d) a quarterly report form with instructions.

7 On December 16, 2004, the Office of Probation sent a reminder letter to respondent regarding
8 the terms and conditions of his probation. The December letter specifically notified respondent that
9 his first written report due October 10, 2004, had not been received by the Office of Probation, and
10 requested that respondent submit it immediately. The April and December 2004 letters were not
11 returned as undeliverable.

12 On March 10, 2005, the Office of Probation telephoned respondent and left a message
13 regarding his missing quarterly reports, and requested that he return the call.

14 At no time did respondent reply to the aforementioned letters or return the telephone call.

15 As of June 28, 2005, the day before the State Bar's Motion to Revoke Probation in this
16 proceeding was filed, the Office of Probation had not received the written quarterly reports that were
17 overdue.

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

21 Section 6093, subdivision (b), provides that violation of a probation condition constitutes
22 cause for revocation of any probation then pending, and may constitute cause for discipline. Section
23 6093, subdivision (c), provides that the standard of proof is the preponderance of the evidence.

24 Therefore, the State Bar has demonstrated by a preponderance of the evidence that respondent
25 wilfully violated the probation conditions ordered by the Supreme Court in S121225. Respondent
26 violated the terms of his probation by failing to submit any written quarterly reports and failing to
27

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

1 respond to inquiries from the Office of Probation regarding compliance with probation conditions.

2 As a result, the revocation of respondent's probation in California Supreme Court case No.
3 S121225 is warranted.

4 **IV. Mitigating and Aggravating Circumstances**

5 **A. Mitigation**

6 Since respondent did not participate in this probation revocation proceeding, no evidence in
7 mitigation was presented and none is apparent from the record. (Rules Proc. of State Bar, tit. IV,
8 Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)³

9 **B. Aggravation**

10 Respondent has been disciplined on three previous occasions.⁴ On August 12, 2000, in State
11 Bar Court case No. 97-O-11601, respondent was privately reprovved for violations of rules 3-110A,
12 3-700(D(2), and 4-100(B)(3) of the Rules of Professional Conduct. In State Bar Court case No. O1-
13 H-03535, arising out of respondent's failure to comply with the conditions of his private reprovral, he
14 was found to have violated Business and Professions Code section 6103 and rule 1-110 of the Rules
15 of Professional Conduct. Effective August 17, 2002, the Supreme Court ordered (S106726) that
16 respondent be suspended from the practice of law for one year, that execution of suspension be stayed,
17 and that he be placed on probation for two years subject to certain conditions, including 30 days
18 actual suspension. Respondent was obligated by that Supreme Court order to submit quarterly reports
19 to the Office of Probation. However, he failed to submit the quarterly reports in compliance with the
20 Supreme Court order. Thus, in its order approving stipulation (State Bar Court case No. 03-O-
21 02651), the court found that respondent failed to obey a court order in wilful violation of section
22 6103. Respondent's prior record of discipline on three previous occasions constitutes a serious
23 aggravating circumstance within the meaning of Standard 1.2(b)(i).

24 ³All further references to standards are to this source.

25
26 ⁴Given that the Office of Probation of the State Bar did not submit a copy of respondent's
27 first and second record of discipline, the court will take judicial notice of those records pursuant
28 to Evidence Code section 452. However, the court cautions that the better practice is that the
State Bar submit a certified copy of all prior records of discipline before the case is submitted.
(See, Rules Proc. of State Bar, rule 216.)

1 Respondent's failure to participate in this proceeding is also an aggravating factor. (Std.
2 1.2(b)(vi).

3 V. Discussion

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

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

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

16 Respondent's failure to comply with the terms of his disciplinary probation in this proceeding
17 is egregious. The current probation revocation proceeding is the **second** time that the Office of
18 Probation has been compelled to bring a proceeding in the State Bar Court as a result respondent's
19 failure to comply with the terms and conditions of his probation. Moreover, respondent also failed
20 to comply with the conditions of his private reproof. Although the respondent specifically stipulated
21 to the terms and conditions of his probation in the State Bar Court case No. 03-O-02651, he has not
22 filed a single written quarterly probation report since the Supreme Court's final disciplinary order
23 became effective on April 11, 2004. He has failed to respond to the letters and telephone call from
24 the Office of Probation relating to whether respondent is complying or has complied with his
25 probation requirements. "[A] probation 'reporting requirement permits the State Bar to monitor [an
26 attorney probationer's] compliance with professional standards.'" (*In the Matter of Weiner* (Review
27 Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759,763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595,605.)
28 In addition, "an attorney probationer's filing of quarterly probation reports is an important step

1 towards the attorney's rehabilitation." (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at
2 p. 763.) Respondent's failure to file quarterly reports warrants significant discipline.

3 Moreover, respondent was aware of the probation conditions. He participated in his prior
4 disciplinary proceeding and entered into a stipulation to resolve it. That prior disciplinary proceeding
5 resulted from respondent's failure to file quarterly reports. Despite being reminded in the current
6 proceeding about the terms and conditions of his disciplinary probation, respondent failed to comply
7 with them. There is no indication that respondent recognized his misconduct, nor is there any
8 indication of his efforts to comply with the conditions. Accordingly, the court does not believe it
9 worthwhile to recommend again placing him on probation subject to conditions. Respondent is
10 clearly not amenable to probation.

11 Hence, the court finds good cause for granting the Office of Probation's motion to revoke
12 respondent's probation and concludes that the entire amount of the stayed suspension be imposed.
13 (Rule 562.) The court recommends that respondent's probation in Supreme Court case No. 121225
14 (State Bar Court case No. 03-O-02651) be revoked, that the previously ordered stay of suspension be
15 lifted, and that respondent be actually suspended from the practice of law for a period of one year.

16 **VI. Recommended Discipline**

17 Accordingly, the court recommends as follows:

- 18 1. That the probation of respondent **LAWRENCE A. MERRYMAN** previously ordered
19 in Supreme Court case No. S121225 (State Bar Court case No. 03-O-02651) be
20 revoked;
- 21 2. That the stay of execution of the previous suspension be lifted; and
- 22 3. That respondent be actually suspended from the practice of law for one year.

23 It is recommended that respondent must comply with the requirements of California Rules
24 of Court, rule 955, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date
25 of the Supreme Court order imposing discipline in this matter.

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

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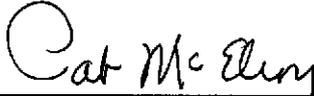
VII. Costs

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.

VIII. Order of Involuntary Inactive Enrollment

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

Dated: August 23, 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 August 23, 2005, I deposited a true copy of the following document(s):

**ORDER GRANTING MOTION TO REVOKE PROBATION AND FOR
INVOLUNTARY INACTIVE ENROLLMENT, filed August 22, 2005**

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

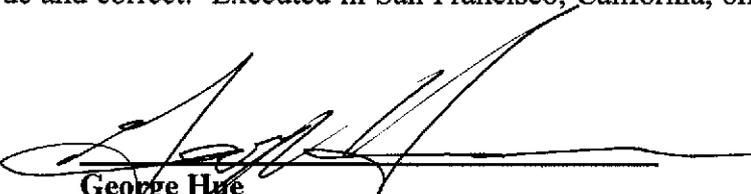
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**LAWRENCE A. MERRYMAN
P O BOX 2783
NEWPORT BEACH CA 92659**

- [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 **August 23, 2005**.


George Hue
Case Administrator
State Bar Court