

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 06-PM-10061 - RAH
)	
ROBERT M. NUSBAUM,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 149672,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

The State Bar's Office of Probation, represented by Supervising Attorney Terry Goldade, filed a motion to revoke the probation imposed upon respondent Robert M. Nusbaum by the Supreme Court in case number S124138 (State Bar case nos. 02-O-13937 et seq.). (See Bus. & Prof. Code, § 6093 subds. (b) and (c) and Rules Proc. of State Bar, rules 560, et seq.¹) The Office of Probation also seeks to have respondent enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (d). Respondent did not participate in this proceeding.

For the reasons stated below, the Court finds by a preponderance of the evidence that respondent wilfully failed to comply with the terms and conditions of his probation as alleged by the Office of Probation, and that the requirements for inactive enrollment under section 6007, subdivision (d)(1) have been met. In view of the misconduct and the record as a whole, the Court recommends that respondent's probation be revoked and that the full two-year stayed suspension be imposed. Further, the Court orders that respondent be enrolled as an inactive member of the State Bar.

¹ All further references to sections are to this Code and all further references to rules are to these Rules.

FINDINGS OF FACT

Respondent was admitted to the practice of law in the State of California in December 1990 and has been a member of the State Bar since then.

By order filed July 8, 2004, and effective August 7, 2004, the Supreme Court suspended respondent for two-years, stayed execution of that suspension, and placed him on probation for two-years on certain conditions, including 60 days actual suspension. Additional conditions of probation required respondent to (1) submit quarterly reports attesting under penalty of perjury that he had complied with the California Rules of Professional Conduct and the State Bar Act; and (2) attend the State Bar's Ethics School and provide proof to the Office of Probation within one-year from the effective date of the Supreme Court order that he had attended and passed the test at the end of the course.

The Office of Probation sent respondent a letter dated December 28, 2004, outlining the terms and conditions of the probation. The letter was addressed to respondent's membership records address and was not returned as undeliverable. On or about March 2, 2005, a deputy from the Office of Probation telephoned respondent at his membership records telephone number and left a message asking about respondent's quarterly report. On or about June 16, 2005, a deputy from the Office of Probation telephoned respondent at his membership records telephone number and left a message asking whether respondent had enrolled in the State Bar's Ethics School. On or about July 14, 2005, a deputy from the Office of Probation left a message with respondent's secretary requesting respondent's quarterly reports for April and July 2005. On or about August 4, 2005, respondent's secretary told a deputy from the Office of Probation that respondent would be sending his quarterly report by the next day.

Respondent's quarterly reports that were due January and April 2005 were filed late and the reports due July and October 2005 were not filed. Further, as of January 2006, the Office of Probation had not received proof that respondent attended the State Bar's Ethics School and passed the test given at the end of the course.

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 sections 6093(b) and (c) and rule 561, the Court concludes that the State Bar proved by a preponderance of the evidence that respondent wilfully violated the conditions of his probation by (1) failing to file timely the quarterly reports that were due January and April 2005, and failing to file the reports that were due July and October 2005; and (2) failing attend the State Bar’s Ethics School and provide proof to the Office of Probation within one year from the effective date of the Supreme Court order that he had attended and passed the test.

MITIGATING AND AGGRAVATING CIRCUMSTANCES

No mitigating evidence was offered or is apparent from the record. In aggravation, respondent has a record of prior discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i) (hereafter “Standard(s)”).) As noted above, the discipline underlying this probation revocation proceeding was imposed by the Supreme Court by order filed July 8, 2004. In this underlying case, respondent stipulated that in a three-client matter he failed to perform services competently, failed to deposit client funds in his client trust account, failed to render appropriate accounts to his clients regarding client funds and failed to pay promptly client funds to his client. No mitigating circumstances were found in this prior case. In aggravation, respondent stipulated that he had a record of prior discipline in that he was suspended in 2001 for one-year, stayed, with two-years probation and 60 days actual suspension.²

² State Bar member records, of which the Court takes judicial notice pursuant to Evidence Code section 452, subdivision (d), show that respondent was also disciplined by the Supreme Court in case number S138287 (State Bar case no. 04-O-11861). By order filed December 28, 2005, and effective January 27, 2006, respondent was suspended for five-years, stayed, with five-years probation and two-years actual suspension.

The following additional aggravating circumstances are found in this probation revocation matter: Respondent engaged in multiple acts of misconduct by failing to comply with multiple conditions of probation. (Std. 1.2(b)(ii).) Respondent significantly harmed the administration of justice as his failure to comply with the conditions of his probation made it more difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts. (Std. 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. (Std. 1.2(b)(v).)

DISCUSSION

The State Bar requests that respondent's probation be revoked, that the stay of execution of the suspension previously imposed be lifted, and that respondent be actually suspended for the full period of the stayed suspension. The Court concludes that this discipline is warranted.

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.)

Respondent failed to comply with the quarterly reporting condition of his probation. "At a minimum, quarterly probation reporting is an important step towards an attorney probationer's rehabilitation because it requires the attorney, four times a year, to review and reflect upon his professional conduct in light of the minimum professional standards that are set forth in the Rules of Professional Conduct and the State Bar Act." (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.) In addition, respondent failed to take the State Bar's

Ethics School, a course which would have provided him learning in his ethical obligations as an attorney, another important step toward his rehabilitation. Respondent's failure to comply with these conditions coupled with his failure to participate in this proceeding raise serious concerns about his lack of insight and are a strong indicator that the risk of future misconduct is great.

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.) A lengthy period of actual suspension will allow time for introspection. Based on the above, the Court concludes that the imposition of the full stayed suspension is warranted.

DISCIPLINE RECOMMENDATION

The Court recommends that the probation imposed by the Supreme Court in case number S124138 (State Bar case nos. 02-O-13937 et seq.) be revoked, that the previous stay of execution of the suspension be lifted, and that respondent Robert M. Nusbaum be actually suspended from the practice of law for two-years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, with credit for the period of his inactive enrollment ordered herein pursuant to Business and Professions Code section 6007, subdivision (d).

It is also recommended that respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) of this rule within 40 days of the effective date of the Supreme Court order in this matter.³

³Respondent is required to file a rule 955(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

It is not recommended that respondent again be ordered to take and pass the Multistate Professional Responsibility Examination as he was ordered to do so in Supreme Court case number S124138 (State Bar case no. 02-O-13937 et seq.).

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment

INACTIVE ENROLLMENT ORDER

Respondent was subject to a stayed suspension, has been found to have violated his probation conditions, and a period of actual suspension due to said violations has been recommended. Accordingly, the requirements for respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (d)(1) have been met.

It is therefore ordered that respondent Robert M. Nusbaum, member number 149672, be enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 60007, subdivision (d), effective three days after service of this order.

Dated: April __, 2006

RICHARD A. HONN
Judge of the State Bar Court