FILED MARCH 22, 2006

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT - LOS ANGELES**

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| In the Matter of<br><br>**GORDON R. WRIGHT**,<br><br>**Member No. 78644**,<br><br>A Member of the State Bar. | )<br>)<br>)<br>)<br>)<br>)<br>) | **Case No. 06-PM-10554 - RAP**<br><br>**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT** |

The State Bar's Office of Probation, represented by Supervising Attorney Terry Goldade, filed a motion to revoke the probation imposed upon respondent Gordon R. Wright by the Supreme Court in case number S134630 (State Bar case no. 04-0-14209). (See Bus. & Prof. Code, § 6093 subds. (b) and (c)[1] and Rules Proc. of State Bar, rules 560, et seq.[2]) 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, that the previously ordered stay of suspension be lifted and that he be actually suspended from the practice of law for a period of six-months. Further, the Court orders that respondent be enrolled as an inactive member of the State Bar.

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[1] All further references to sections are to this Code unless otherwise noted.

[2] All further references to rules are to these rules unless otherwise noted.

## FINDINGS OF FACT

Respondent was admitted to the practice of law in the State of California in December 1977 and has been a member of the State Bar since then.

By order filed August 23, 2005, and effective September 22, 2005, the Supreme Court suspended respondent for six-months, stayed execution of that suspension, and placed him on probation for one-year on certain conditions, including that he (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; (2) send an itemized bill of the work he performed to his former clients, refund any unearned fees to them, offer to arbitrate any fee dispute with them, and provide proof to the Office of Probation that he had done so; and (3) report to the State Bar's Membership Records Office and the Office of Probation any change in his address and telephone number within 10 days of the change.

The Office of Probation sent respondent a letter dated September 7, 2005, outlining the terms and conditions of the probation. The letter was addressed to respondent's membership records address and was returned as undeliverable.

On or about November 1, 2005, a deputy from the Office of Probation telephoned respondent at his membership records telephone number and reached a message stating that respondent's telephone had been disconnected.

The Office of Probation sent respondent a letter dated November 2, 2005, reminding respondent of the conditions of his probation and requesting that he submit his quarterly report immediately. The letter was addressed to respondent's membership records address and was returned as undeliverable and unable to be forwarded. The quarterly report due January 10, 2006, was not filed.

On or about December 1, 2005, the Office of Probation mailed copies of the September 7 and November 2 letters to respondent at an alternate address they had for him. These letters were not returned as undeliverable.

On or about December 29, 2005, a probation deputy telephoned respondent at his membership records telephone number and heard a sound that indicated the line might be connected to a fax machine. The probation deputy was unable to leave a message.

The Office of Probation has not received proof that respondent sent an itemized bill of the work he performed to his former clients, refunded any unearned fees to them, or offered to arbitrate any fee dispute.

## 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 the quarterly report due January 10, 2006; (2) failing to provide proof that he sent an itemized bill of the work he performed to his former clients, refunded any unearned fees to them, and offered to arbitrate any fee dispute; and (3) failing to update his membership records address and notify the Office of Probation of his current address and telephone number.

## 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).)[3] As noted above, the discipline underlying this probation revocation proceeding was imposed by the Supreme Court by order filed August 23, 2005. In this underlying case, respondent stipulated that in a single matter he failed to perform services competently, failed to communicate with his clients, improperly withdrew from

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[3] All further references to standards are to these standards.

representing his clients, failed to promptly release the clients' papers and property to the clients' new attorney, and failed to cooperate in the disciplinary investigation of the clients' complaint against him. In aggravation in this prior case, respondent stipulated that he harmed his clients and that the misconduct involved multiple acts of wrongdoing. In mitigation, it was stipulated that respondent did not have a record of prior discipline.

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 respondent 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 six-months. The Court agrees that recommending the full amount of stayed suspension 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.) Similarly, requiring respondent to make amends to his clients by providing them with an accounting, returning unearned fees and offering to arbitrate any fee dispute, was also an important step toward 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 S134630 (State Bar case no. 04-0-14209) be revoked, that the previous stay of execution of the suspension be lifted, and that respondent Gordon R. Wright be actually suspended from the practice of law for six months.

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.[4]

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 S134630 (State Bar case no. 04-0-14209).

**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 Gordon R. Wright, member number 78644, 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 following service of this order.

Dated: March 21, 2006

RICHARD A. PLATEL
Judge of the State Bar Court

[4]Respondent 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.)