

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

In the Matter of	)	<b>Case No. 06-PM-10698-RAP</b>
	)	
<b>RANDY E. BENDEL,</b>	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE PROBATION AND FOR</b>
<b>Member No. 130569,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this probation revocation proceeding, respondent **Randy E. Bendel** is charged with violating his probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (Office of Probation) seeks to revoke his probation, to impose upon respondent the entire period of suspension previously stayed, and to involuntarily enroll respondent as an inactive member of the State Bar.

The court finds, by preponderance of the evidence, that respondent has violated his probation conditions and hereby grants the motion. The court recommends, among other things, that respondent's probation be revoked, that the previous stay of execution of the two years suspension be lifted, and that respondent be actually suspended from the practice of law for two years and until he makes specified restitution.

**II. Pertinent Procedural History**

On February 10, 2006, 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.<sup>1</sup> The motion was mailed to respondent's official membership records address.

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<sup>1</sup>References to rules are to the Rules of Procedures of the State Bar, unless stated otherwise.

Respondent did not file a response within 20 days of the service of the motion, as required by rule 563(b)(1).

The court took this matter under submission on March 8, 2006.

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

All factual allegations contained in the motion to revoke probation and supporting documents are deemed admitted upon respondent's failure to file a response. (Rules Proc. of State Bar, rule 563(b)(3).)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 14, 1987, and has since been a member of the State Bar of California.

#### **B. Probation Conditions in Supreme Court Case No. S126314**

On September 30, 2004, in Supreme Court case No. S126314 (SCO), the California Supreme Court ordered that:

1. Respondent be 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), Standards for Attorney Sanctions for Professional Misconduct, and until he pays the court-ordered sanctions imposed on him individually (if any), on him and Maria Horwitz, jointly and severally, and on Maria Horwitz individually (sanctions) in the total amount of \$21,652; and makes restitution to Maria Horwitz (or the Client Security Fund, if appropriate) to the extent she has paid any portion of the sanctions, plus 10% interest per annum from the dates she made such payments, and furnishes satisfactory proof thereof to the State Bar's Office of Probation, that execution of the suspension be stayed;
2. Respondent be placed on probation for two years, on the condition that he be actually suspended for six months, including restitution, as recommended by the Hearing Department of the State Bar Court in its decision filed May 19, 2004 (State Bar Court case No. 00-O-13391); and

3. Respondent comply with certain probation conditions, including, but not limited to:
  - a. Submitting quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation;
  - b. Attending the State Bar Ethics School and passing the test given at the end of the session within one year from the effective date of discipline, and providing proof of compliance; and
  - c. Reporting a change in telephone number and office address to Membership Records Office and the Office of Probation within 10 days of such change.

Notice of the SCO was properly served upon respondent in the manner prescribed by rule 24(a) of the California Rules of Court at respondent's official address in accordance with Business and Professions Code section 6002.1.<sup>2</sup>

### **C. Probation Violations**

On November 9, 2004, the Office of Probation sent a letter to respondent at his official address, reminding him of the probation conditions. This letter was not returned to the State Bar as undeliverable.

On November 11, 2005, the Office of Probation spoke with Ms. Bendel on the telephone. Ms. Bendel indicated that she would give the message to respondent regarding respondent's noncompliance with certain probation conditions, including proof of his restitution, passage of the MPRE, and completion of Ethics School. Respondent did not return the call to the Office of Probation.

On December 1, 2005, the Office of Probation again left a telephone message for respondent. Respondent returned the call on December 9, 2005. But when the Office of Probation tried to call him back, leaving a message for him, respondent did not contact the Office of Probation again.

On December 22, 2005, the Office of Probation wrote to respondent and advised him that it had not received proof of his Ethics School and Multistate Professional Responsibility Examination (MPRE) compliance due in October 2005. The letter, however, was returned as

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<sup>2</sup>References to sections are to the Business and Professions Code.

undeliverable, with a handwritten notation: “Return to Sender. No longer maintains this P.O. Box.”

Based on the evidence submitted by the Office of Probation, respondent failed to do the following:

1. Submit the quarterly report due January 10, 2006;
2. Submit proof of his attendance at the Ethics School by October 30, 2005; and
3. Report a change in his address to Membership Records Office and the Office of Probation within 10 days of such change.

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

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

Therefore, the State Bar has demonstrated by a preponderance of the evidence that respondent wilfully violated the probation conditions ordered by the Supreme Court in its September 30, 2004 order. Respondent failed to file the written quarterly report that was due January 10, 2006; failed to submit proof of attending Ethics School by October 30, 2005; and failed to report a change in address to Membership Records Office and the Office of Probation within 10 days of such change.

As a result, the revocation of respondent’s probation in California Supreme Court case No. S126314 is warranted.

#### **IV. Mitigating and Aggravating Circumstances**

##### **A. Mitigation**

Since respondent did not file a response to the probation revocation motion, no evidence in mitigation was presented and none is apparent from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>3</sup>

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<sup>3</sup>All further references to standards are to this source.

## **B. Aggravation**

In aggravation, respondent has one prior record of discipline. (Std. 1.2(b)(i).) On September 30, 2004, in the underlying matter, respondent was ordered suspended for two years and until he pays court-ordered sanctions and until he complies with standard 1.4(c)(ii), stayed, and placed on probation for two years, on condition that he be actually suspended for six months, including restitution. His misconduct involved overzealous advocacy in one client matter, resulting in violations of Business and Professions Code sections 6103 and 6068, subdivisions (b), (c) and (d), and rule 3-200(A) of the Rules of Professional Conduct. Respondent participated in that proceeding.

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

## **V. Discussion**

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

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

In determining the level of discipline to be imposed, 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. 525, 540.) The extent of the discipline is dependent, in part, on the nature of the probation violation and its relationship to respondent's prior misconduct. (*Ibid.*)

Here, respondent's prior misconduct wasted an enormous amount of judicial resources, involving the California appellate court, the Ninth Circuit and the State Bar Court. In the instant matter, the primary probation violation found was his failure to comply with the rehabilitation conditions. He has failed to file a quarterly report, attend Ethics School, and failed to notify the State Bar of the change in his address.

“[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 a quarterly report warrants significant discipline.

In consideration of respondent’s violation of probation conditions and his lack of participation in these proceedings and continuing noncompliance with probation conditions despite the Office of Probation’s efforts to secure it, 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.)

Hence, the court finds good cause to GRANT the motion to revoke respondent’s probation and recommends that the entire period of his stayed suspension be imposed.

#### **VI. Recommended Discipline**

\_\_\_\_\_Accordingly, the court recommends as follows:

1. That the probation of respondent **Randy E. Bendel** previously ordered in Supreme Court case No. S126314 (State Bar Court case No. 00-O-13391) be revoked;
2. That the previous stay of execution of the suspension be lifted; and
3. That respondent 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), Standards for Attorney Sanctions for Professional Misconduct, and until he pays the court-ordered sanctions imposed on him individually (if any), on him and Maria Horwitz, jointly and severally, and on Maria Horwitz individually (sanctions) in the total amount of \$21,652; and makes restitution to Maria Horwitz (or the Client Security Fund, if appropriate) to the extent she has paid any portion of the sanctions, plus

10% interest per annum from the dates she made such payments, and furnishes satisfactory proof thereof to the State Bar's Office of Probation .

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

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination as he was previously ordered to do so in S126314.

#### **VII. Costs**

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

#### **VIII. Order of Involuntary Inactive Enrollment**

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).<sup>4</sup> This inactive enrollment order will be effective three calendar days after the date upon which this Order is served.

Dated: March 30, 2006

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**RICHARD A. PLATEL**  
Judge of the State Bar Court

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<sup>4</sup>Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)