

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

In the Matter of	)	<b>Case No. 06-PM-12303-RAP</b>
	)	
<b>STEVEN B. EGGLESTON,</b>	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE PROBATION AND ORDER OF</b>
<b>Member No. 105111,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

Based upon alleged probation violations, the State Bar of California, Office of Probation (“State Bar”) filed a motion to revoke the probation of respondent Steven B. Eggleston (“respondent”) imposed by the Supreme Court in its order filed on February 24, 2005, in Case No. S129834 (State Bar Court Case No. 02-O-13437).

The State Bar requests that respondent’s probation be revoked, and that respondent be actually suspended for three years and until he makes restitution and until he satisfies the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.<sup>1</sup> The State Bar also requests that respondent be ordered to comply with rule 955 of the California Rules of Court (“rule 955”), and that respondent be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (d).<sup>2</sup>

For the reasons stated below, the State Bar’s motion to revoke respondent’s probation is hereby granted, as is its request to involuntarily enroll respondent to inactive status. The court

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<sup>1</sup>All further references to standard(s) refer to the Standards for Attorney Sanctions for Professional Misconduct.

<sup>2</sup>Unless otherwise indicated, all further references to section(s) refer to provisions of the California Business and Professions Code.

therefore recommends that respondent be actually suspended from the practice of law for three years and until he makes specified restitution and provides satisfactory proof thereof to the Office of Probation and until he satisfies the requirements of standard 1.4(c)(ii). The court shall also order respondent involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (d).<sup>3</sup>

## **II. PERTINENT PROCEDURAL HISTORY**

On May 15, 2006, the State Bar filed with the State Bar Court a motion to revoke respondent's probation, accompanied by the declaration of Eddie Esqueda and Exhibits 1-3 in support of said motion. A copy of the motion, the declaration of Eddie Esqueda, Exhibits 1-3 and a Probation Revocation Response form were properly served upon respondent on May 15, 2006, by certified mail, return receipt requested, addressed to respondent at his latest address shown on the official membership records of the State Bar ("official address") pursuant to section 6002.1, subdivision (c) and rules 60 and 563(a) of the Rules of Procedure of the State Bar of California ("Rules of Procedure").<sup>4</sup> There is no evidence as to whether the copy of the motion and supporting documents was returned to the State Bar by the U.S. Postal Service ("USPS") as undeliverable or for any other reason.

On May 22, 2006, a Notice of Assignment was filed and a copy was properly served upon respondent by first-class mail, postage fully prepaid, addressed to respondent at his official address. The copy of said notice served upon respondent was not returned to the State Bar Court by the USPS as undeliverable or for any other reason.

Respondent did not file a response to the State Bar's motion to revoke his probation, and the

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<sup>3</sup>For the reasons set forth *infra*, the court will not recommend that respondent be ordered to comply with rule 955.

<sup>4</sup>The certified copy of respondent's address history dated April 25, 2006, which is attached as part of Exhibit 1, is not competent evidence to establish that documents served after April 25, 2006, were properly served upon respondent. The court therefore takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h), which establishes that effective March 1, 2004, respondent's official address has been, and remains as of the date of this decision, P O Box 931652, Los Angeles, CA 90093.

time for doing so expired.

After respondent failed to timely file a response as required by rule 563(b)(1), on June 16, 2006, the court issued a Submission Order setting forth that this matter was to stand submitted for decision as of June 16, 2006. A copy of said order was properly served upon respondent by first-class mail, postage fully prepaid, addressed to respondent at his official address. The copy of said order served upon respondent was not returned to the State Bar Court by the USPS as undeliverable or for any other reason.

### **III. FINDINGS OF FACT<sup>5</sup>**

#### **Jurisdiction**

Respondent was admitted to the practice of law in the State of California on December 3, 1982. Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of the official membership records pertaining to respondent which are maintained by the State Bar of California. These records reflect that respondent was a member of the State Bar of California at all times pertinent to the allegations herein and is currently a member of the State Bar of California.

#### **Probation Violations**

By order dated February 24, 2005, the Supreme Court imposed discipline on respondent in Supreme Court Case No. S129834 (State Bar Court Case No. 02-O-13437). The Supreme Court suspended respondent for three years and until he makes specified restitution and furnishes satisfactory proof thereof to the Office of Probation and until he satisfies the requirements of standard 1.4(c)(ii); stayed execution of said suspension; and placed respondent on probation for five years on condition that he be actually suspended for two years and until he makes specified restitution and provides satisfactory proof of such to the Office of Probation and until he satisfies the requirements of standard 1.4(c)(ii). Respondent was also ordered to comply with the other conditions of probation in the State Bar Court Hearing Department's order approving stipulation

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<sup>5</sup>These findings of fact are based on the admitted factual allegations contained in the State Bar's motion to revoke respondent's probation, the declaration of Eddie Esqueda and State Bar Exhibits 1-3 attached to said motion. (Rules Proc. of State Bar, rule 563(b)(3).) The declaration of Eddie Esqueda and State Bar Exhibits 1-3 are admitted into evidence pursuant to rule 563(e) of the Rules of Procedure.

filed on October 20, 2004.

The Supreme Court order became effective on March 26, 2005.<sup>6</sup>

As a condition of probation, respondent was ordered to do the following:

(a) Comply with the provisions of the State Bar Act and the Rules of Professional Conduct and to submit written quarterly reports each January 10, April 10, July 10 and October 10 during the probation period to the Office of Probation attesting under penalty of perjury to whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during that reporting period. Respondent has not complied in that he failed to file quarterly reports due July 10 and October 10, 2005, and January 10 and April 10, 2006;

(b) Provide proof within one year (by March 26, 2006) of his attendance at Ethics School and his passage of its test. Respondent has not complied in that he has not provided proof of attending Ethics School and has not attended Ethics School;

(c) Provide proof within one year (by March 26, 2006) of his attendance at Ethics School Client Trust Accounting School and his passage of its test. Respondent has not complied in that he has not provided proof of attending Ethics School Client Trust Accounting School and has not attended said course;

(d) Either state under penalty of perjury in the quarterly reports due July 10 and October 10, 2005, and January 10 and April 10, 2006, that he was not in possession of client funds, securities or property during the entire period covered by a report or to file a certificate with each report that he

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<sup>6</sup>No proof was offered to establish that respondent had notice of the Supreme Court's February 24, 2005, order. However, the Clerk of the Supreme Court was required to promptly send a copy of the order to respondent once it was filed. (Cal. Rules of Court, rule 29.4(a).) Also, except with respect to arrests, it is presumed that official duties have been regularly performed unless the party against whom the presumption operates *proves* otherwise. (Evid. Code, §§ 606, 660, 664; *In re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Thus, because respondent has not proved otherwise, the court must find the Supreme Court Clerk properly sent respondent a copy of the order promptly after it was filed. (*Ibid.*) Furthermore, because there is no evidence in the record that would support a finding to the contrary, the court finds that respondent actually received that copy of the order. (Cf. Evid. Code, §§ 604, 630, 641 [correctly addressed and properly mailed letter is presumed to have been received in the ordinary course of mail].)

had maintained client funds, securities or other client properties and certain records thereof in a specified manner. Respondent has not complied in that he has failed to do either for the reports due July 10 and October 10, 2005, and January 10 and April 10, 2006.

(e) Notify the State Bar's Office of Probation and the Membership Records Office of the State Bar of any change in office address or telephone number within ten days.<sup>7</sup>

(f) Make restitution by October 1, 2005, to Kristen Horan (or the Client Security Fund, if appropriate) in the amount of \$1,405.62 plus 10% interest per annum accruing from October 19, 2002, and provide proof of such to the Office of Probation. Respondent has failed to provide proof of any restitution.

On March 24, 2005, the Office of Probation, by and through Probation Deputy Eddie Esqueda ("Probation Deputy Esqueda"), provided respondent with, among other things, a copy of his disciplinary order imposing probation, a copy of the conditions of probation, and a letter confirming certain terms and conditions of probation, including suspension. The letter stated, in part, "**Failure to timely** submit reports or any other proof of compliance **will result in a non-compliance referral** to the State Bar Court Review Department or referral for action by the Supervising Attorney of the Office of Probation." (Exhibit 3, letter dated March 24, 2005, emphasis in original.) This letter was not returned to the State Bar as undeliverable.

On or about October 19, 2005, Probation Deputy Esqueda telephoned respondent's membership records telephone number and left a message asking respondent to call Probation Deputy Esqueda because respondent had not yet submitted his first two quarterly reports. Probation Deputy Esqueda did not receive a call back.

On or about March 22, 2006, Probation Deputy Esqueda telephoned respondent's

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<sup>7</sup>The State Bar's motion to revoke respondent's probation further alleges that respondent has not complied in that he has not updated his telephone number, which is no longer in service. However, neither the conditions of respondent's probation nor the provisions of Business and Professions Code section 6002.1 require respondent to maintain his telephone number on the official membership records of the State Bar unless respondent has an office. As the State Bar has failed to provide evidence that respondent has an office, the court will not find that respondent violated this condition of his probation.

membership records telephone number and received a recording stating the number was no longer in service. At no time since Probation Deputy Esqueda's call has respondent notified the Office of Probation of a change in his telephone number. At no time since Probation Deputy Esqueda's call has respondent changed his telephone number with the Membership Records Office of the State Bar of California.

On March 27, 2006, Probation Deputy Esqueda sent a letter to respondent enclosing a copy of his March 24, 2005, letter. The March 27, 2006, letter advised respondent that he was in violation of his probation for failing to comply with certain conditions, including the submission of quarterly reports and the payment of restitution. Respondent was also advised to immediately submit the delinquent reports. The letter also reminded respondent that he was required to report to the Office of Probation and the Membership Records Office of the State Bar, within ten days, all changes of information, including his office address or other address for State Bar purposes as prescribed by section 6002.1. The letter noted that respondent's membership records telephone number was no longer in service. Enclosed with the letter was a change of address form. This letter was not returned to the State Bar as undeliverable.

Respondent has failed to: (1) submit the quarterly reports due on July 10 and October 10, 2005, and January 10 and April 10, 2006; (2) provide proof of attending Ethics School and has not attended Ethics School; (3) provide proof of attending Ethics School Client Trust Accounting School and has not attended said course; (4) either state under penalty of perjury in the quarterly reports due July 10 and October 10, 2005, and January 10 and April 10, 2006, that he was not in possession of client funds, securities or property during the entire period covered by a report or to file a certificate with each report that he had maintained client funds, securities or other client properties and certain records thereof in a specified manner; and (5) provide proof to the Office of Probation of restitution to Kristen Horan (or the Client Security Fund, if appropriate) by October 1, 2005.

#### **IV. 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 section 6093, subdivision (c) and rule 561 of the Rules of Procedure, the court concludes that the State Bar has demonstrated by a preponderance of the evidence that respondent wilfully violated certain conditions of probation ordered by the Supreme Court by failing to: (1) submit the quarterly reports due on July 10 and October 10, 2005, and January 10 and April 10, 2006; (2) provide proof of attending Ethics School and has not attended Ethics School; (3) provide proof of attending Ethics School Client Trust Accounting School and has not attended said course; (4) either state under penalty of perjury in the quarterly reports due July 10 and October 10, 2005, and January 10 and April 10, 2006, that he was not in possession of client funds, securities or property during the entire period covered by a report or to file a certificate with each report that he had maintained client funds, securities or other client properties and certain records thereof in a specified manner; and (5) provide proof to the Office of Probation of restitution to Kristen Horan (or the Client Security Fund, if appropriate) by October 1, 2005. These conclusions warrant the revocation of probation as provided by section 6093, subdivision (b).

#### **V. AGGRAVATING CIRCUMSTANCES**

In aggravation, respondent has a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i) (“standard”).)<sup>8</sup> On February 24, 2005, the Supreme Court filed an order in Case No. 129834 (State Bar Court Case No. 02-O-13437), suspending respondent from the practice of law for three years and until he makes specified restitution and furnishes satisfactory proof thereof to the Office of Probation and until he satisfies the requirements of standard 1.4(c)(ii); staying execution of said suspension; and placing respondent on probation for five years on condition that he be actually suspended for two years and until he makes specified restitution and provides satisfactory proof of such to the Office of Probation and until he satisfies the requirements of standard 1.4(c)(ii). In this prior disciplinary matter, in which respondent stipulated to culpability and discipline, respondent violated section 6106 and rules 4-100(A) and 4-100(B)(4) of the Rules of Professional Conduct of the State Bar of California by

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<sup>8</sup>Pursuant to Evidence Code section 452, subdivision (d) , the court takes judicial notice of respondent’s prior record of discipline.

wilfully misappropriating \$22,341.28 in client funds for his own use and purpose. In aggravation, trust funds were involved and respondent refused or was unable to account to the client for improper conduct towards said funds; and respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. In mitigation, respondent had no prior record of discipline.

Further aggravating circumstances in the instant matter include the fact that respondent engaged in multiple acts of misconduct in this matter. (Standard 1.2(b)(ii).)

Respondent's failure to fully comply with the conditions of his probation as set forth above, after being reminded of his obligation to do so by the Office of Probation, demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Standard 1.2(b)(v).)

## **VI. MITIGATING CIRCUMSTANCES**

Respondent did not participate either in person or through counsel in this disciplinary proceeding. No mitigating evidence was therefore offered on respondent's behalf or received into evidence, and none can be gleaned from this record.

## **VII. 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.) In determining the level of discipline, 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. at p. 540.)

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 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.) Furthermore, “[t]he violation of a probation condition significantly related to the attorney’s prior misconduct merits the greatest discipline, especially if the violation raises a serious concern about the need to protect the public or shows the attorney’s failure to undertake steps toward rehabilitation.” (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151.)

In this matter, the court is concerned about respondent’s failure to comply with the above-mentioned conditions of his probation, as well as his failure to participate in this disciplinary proceeding. “[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.)

The court notes that respondent participated in his prior disciplinary proceeding and even entered into a stipulation in the underlying disciplinary matter. Respondent was therefore well aware of the terms and conditions of his probation. Nevertheless, he failed to (1) submit the quarterly reports due on July 10 and October 10, 2005, and January 10 and April 10, 2006; (2) provide proof of attending Ethics School and has not attended Ethics School; (3) provide proof of attending Ethics School Client Trust Accounting School and has not attended said course; (4) either state under penalty of perjury in the quarterly reports due July 10 and October 10, 2005, and January 10 and April 10, 2006, that he was not in possession of client funds, securities or property during the entire period covered by a report or to file a certificate with each report that he had maintained client funds, securities or other client properties and certain records thereof in a specified manner; and (5) provide proof to the Office of Probation of restitution to Kristen Horan (or the Client Security Fund, if appropriate) by October 1, 2005. Respondent’s failure to comply with these probation conditions, particularly his failure to file his quarterly reports and to provide proof of payment of restitution, as well as respondent’s failure to participate in this proceeding and offer any explanation to this court for his non-compliance, is of great concern to the court.

In the disciplinary matter which underlies this probation revocation proceeding, respondent

was suspended from the practice of law for three years and until he makes specified restitution and furnishes satisfactory proof thereof to the Office of Probation and until he satisfies the requirements of standard 1.4(c)(ii); the execution of said suspension was stayed; and respondent was placed on probation for five years on condition that he be actually suspended for two years and until he makes specified restitution and provides satisfactory proof of such to the Office of Probation and until he satisfies the requirements of standard 1.4(c)(ii). Respondent was also ordered to comply with other conditions of probation.

As a result of respondent's probation violations, the State Bar recommends in this matter, inter alia, that respondent be actually suspended for three years and until he makes restitution and until he satisfies the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. The court concurs. Given the nature of the probation conditions which were violated, and respondent's failure to participate in this proceeding and offer any explanation for his non-compliance with his probation conditions, the court finds that substantial discipline is warranted.

Accordingly, the court finds good cause to GRANT the State Bar's motion to revoke respondent's probation.

#### **VIII. DISCIPLINE RECOMMENDATION**

The court hereby recommends to the Supreme Court that respondent's probation pursuant to the Supreme Court order in Case No. S129834 (State Bar Court Case No. 02-O-13437) be revoked, that the previous stay of execution of the suspension be lifted, and that respondent STEVEN B. EGGLESTON be actually suspended from the practice of law for three years and until he makes restitution to Kristen Horan in the amount of \$1,405.62 plus 10% interest per annum from October 19, 2002 (or to the Client Security Fund to the extent of any payment from the fund to Kristen Horan, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. Any restitution to the Client Security Fund is

enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

It is not recommended that respondent be ordered to comply with rule 955 of the California Rules of Court, as respondent was ordered to comply with rule 955 in Supreme Court Case No. S129834 (State Bar Court Case No. 02-O-13437) and has remained actually suspended since March 26, 2005.<sup>9</sup>

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination, as he was ordered to do so in Supreme Court Case No. S129834 (State Bar Court Case No. 02-O-13437) and, if he has not already complied with this order, remains obligated to do so.

It is also recommended that, within one (1) year of the effective date of the discipline herein, respondent shall provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (“MCLE”) requirement, and respondent shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

#### **IX. ORDER REGARDING INACTIVE ENROLLMENT**

The State Bar requests that respondent be involuntarily enrolled inactive pursuant to Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: respondent is subject to a stayed suspension; he has been 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 STEVEN B. EGGLESTON be

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<sup>9</sup>Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of the State Bar’s official membership records. The court notes that these records reveal that respondent has not been entitled to practice law since August 18, 2003, when he was administratively suspended.

involuntarily enrolled as an inactive member of the State Bar of California pursuant to section 6007, subdivision (d). This enrollment shall be effective five days after service of this order.

**IT IS ALSO ORDERED** that his inactive enrollment be terminated as provided by section 6007, subdivision (d)(2).

**IT IS FURTHER RECOMMENDED** that respondent's actual suspension in this matter commence as of the date of his inactive enrollment pursuant to this order. (Section 6007, subdivision (d)(3).)

#### **X. COSTS**

It is recommended 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.

Dated: July 13, 2006

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RICHARD A. PLATEL  
Judge of the State Bar Court