

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 06-PM-12306-PEM
)	
JUAN CHACON,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 141465,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

Based upon an alleged violation of probation, the State Bar of California, Office of Probation (“State Bar”) filed a motion to revoke the probation of respondent Juan Chacon (“respondent”) imposed by the Supreme Court in its order filed on September 2, 2005, in Supreme Court matter S118405 (State Bar Court Case No. 04-PM-14090).

The State Bar requests that respondent’s probation be revoked, and that respondent be actually suspended for the entire one year period of suspension previously stayed. 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).¹

For the reasons set forth below, the court finds, by a preponderance of the evidence, that respondent has violated a condition of probation and therefore grants the State Bar’s motion to revoke respondent’s probation and its request to involuntarily enroll respondent to inactive status. The court will recommend to the Supreme Court that respondent’s probation be revoked, that the previous stay of execution of the one year suspension be lifted, and that respondent be

¹Unless otherwise indicated, all further references to sections refer to provisions of the California Business and Professions Code.

actually suspended from the practice of law for one year. It will also be recommended that respondent provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar's Ethics School and passage of the test given at the end of such session, unless he has previously done so in connection with State Bar Court Case No. 04-PM-14090, and that respondent be ordered to comply with rule 955. The court will also involuntarily enroll respondent as an inactive member of the State Bar pursuant to section 6007, subdivision (d).

II. Pertinent Procedural History

On May 16, 2006, the State Bar filed with the State Bar Court a motion to revoke respondent's probation ("motion"), accompanied by the declaration of Lydia Dineros and Exhibits 1-3 in support of said motion. A copy of the motion, the declaration of Lydia Dineros and Exhibits 1-3, as well as a Probation Revocation Response form, was properly served upon respondent's counsel on May 15, 2006, by certified mail, return receipt requested, 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").

Respondent, represented by attorney Edward O. Lear of the Century Law Group, filed an opposition to the motion on June 6, 2006, and filed an amended opposition on July 3, 2006, requesting a hearing on this matter.

On July 7, 2006, the State Bar filed an opposition to respondent's amended opposition and request for a hearing, noting that respondent's request for a hearing was untimely.

On July 20, 2006, the court issued an order setting forth that the court had determined that a hearing would materially contribute to the consideration of the State Bar's motion and setting forth that a hearing in this matter would be held on July 28, 2006. However, the court noted that as neither of respondent's oppositions were supported by any declarations, respondent would not be permitted to introduce any declarations at the time of the hearing.

The State Bar was represented at the hearing on July 28, 2006, by Supervising Attorney Terrie Goldade. Respondent was represented by Daniel Woodford of the Century Law Group.

Respondent did not appear at the hearing. At the time of the hearing, State Bar Exhibits 1-5 were admitted into evidence. Respondent's Exhibits A and B were not admitted into evidence.

III. Findings of Fact and Conclusions of Law

Unless otherwise indicated, the following findings of fact are based upon the evidence presented at the hearing.

A. Jurisdiction

Respondent was admitted to the practice of law in California on July 20, 1989, and has since been a member of the State Bar of California.

B. Probation Violation

On September 2, 2005, the Supreme Court issued an order in Supreme Court matter S118405 (State Bar Court Case No. 04-PM-14090) revoking the probation previously ordered in Supreme Court matter S118405 (State Bar Court Case No. 01-O-03956), lifting the previously ordered stay of execution of the suspension in Supreme Court matter S118405 (State Bar Court Case No. 01-O-03956), suspending respondent from the practice of law for one year, staying execution of said suspension, and placing respondent on probation for two years, subject to certain probation conditions, including that respondent be actually suspended for 90 days.

The Supreme Court order became effective on October 2, 2005, thirty days after it was entered. (Cal. Rules of Court, rule 953(a).)²

Among the various conditions of probation imposed by the Supreme Court in Supreme Court matter S118405 (State Bar Court Case No. 04-PM-14090) were the following reporting requirements (State Bar Exhibit 2):

1. Respondent was to submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation stating, under penalty of perjury, whether respondent has complied with the State

²Pursuant to Evidence Code section 452, subdivision (e), the court takes judicial notice of rule 953(a) of the California Rules of Court.

Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter.

2. Financial Reporting Requirements:

A. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from respondent and a certified public accountant or other financial professional approved by the Office of Probation certifying that: respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a “Trust Account” or “Client’s Funds Account”; and respondent has kept and maintained the following:

1. a written ledger for each client on whose behalf funds are held that sets forth:
 - a. the name of such client;
 - b. the date, amount, and source of all funds received on behalf of such client;
 - c. the date, amount, payee and purpose of each disbursement made on behalf of such client; and
 - d. the current balance for such client;
2. a written journal for each client trust fund account that sets forth:
 - a. the name of such account;
 - b. the date, amount, and client affected by each debit and credit; and
 - c. the current balance in such account;
3. all bank statements and canceled checks for each client trust account; and

4. each monthly reconciliation (balancing) of (1), (2), and (3) above, and if there are any differences between the monthly total balances reflected in (1), (2), and (3) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:

- a. each item of security and property held;
- b. the person on whose behalf the security or property is held;
- c. the date of receipt of the security or property;
- d. the date of distribution of the security or property; and
- e. the person to whom the security or property was distributed.

B. If respondent did not possess any client funds, property or securities during the entire period covered by a report, respondent was to so state under penalty of perjury in the quarterly report respondent was required to file with the Office of Probation for that reporting period. In this circumstance, respondent did not need to file the appropriate financial certification described above.³

Respondent was aware of the probation condition that he was required to file appropriate financial certification with each quarterly report required herein if he possessed client funds at any time during the period covered by a quarterly report.

On September 22, 2005, the State Bar sent a letter to respondent reminding him, *inter alia*, of certain probation conditions, including that appropriate financial certification was due quarterly beginning January 10, 2006. Enclosed with the letter were, *inter alia*: (1) a copy of the Supreme Court's September 2, 2005, order; (2) that portion of the court's decision setting forth the reporting requirements; and (3) a quarterly report form and instructions.

³The term "appropriate financial certification" will be used to refer to the financial reporting requirements required by this condition of respondent's probation.

On January 10, 2006, respondent filed his quarterly report covering the time period from October 2, 2005 through December 31, 2005. In his January 10, 2006, report, respondent did not attach the appropriate financial certification. Rather, he stated in his quarterly report, next to the paragraph regarding the appropriate financial certification, "AUDIT PENDING." Respondent did not state in the report, under penalty of perjury, that he did not possess any client funds, property or securities during that reporting period.

On April 10, 2006, respondent filed his quarterly report covering the time period from January 1, 2006 through March 31, 2006. In his April 10, 2006, report, respondent did not attach the appropriate financial certification. Although he inserted an "x" next to the paragraph indicating he had attached the appropriate financial certification, he inserted "(STILL PENDING)" after the paragraph.⁴ Respondent did not state in the report, under penalty of perjury, that he did not possess any client funds, property or securities during that reporting period.

On April 12, 2006, the State Bar sent a letter to respondent's counsel acknowledging receipt of respondent's quarterly report filed April 10, 2006, noting that respondent had not filed the appropriate financial certification with the January and April 2006 quarterly reports as required as a condition of respondent's probation. The letter stated, "Please remind your client that failure to file any required proof of compliance will result in a referral for review and determination of further action."⁵ The letter further apprised respondent's counsel that he should advise respondent to file an appropriate motion with the State Bar Court as soon as possible, and a copy should be served on the Office of Probation.⁶

⁴At the hearing in this matter, respondent admitted that he had not complied with the condition of his probation regarding the filing of appropriate financial certification due January 10 and April 10, 2006.

⁵State Bar Exhibit 3, letter dated April 12, 2006.

⁶State Bar Exhibit 3, letter dated April 12, 2006.

Despite the State Bar's advice that respondent should file an appropriate motion as soon as possible, respondent did not file a motion for an extension of time to file the appropriate financial certification due January 10 and April 10, 2006, until May 19, 2006, four days after he was served with the State Bar's motion to revoke his probation.⁷

IV. Conclusion 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 a condition of his probation ordered by the Supreme Court in Supreme Court matter S118405 (State Bar Court Case No. 04-PM-14090) by failing to file with his quarterly reports due January 10 and April 10, 2006, the appropriate financial certification required. This conclusion warrants the revocation of probation as provided by section 6093, subdivision (b).

V. Mitigating and Aggravating Circumstances

A. Mitigation

No clear and convincing evidence in mitigation was presented by respondent in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard. 1.2(e).)⁸ Respondent contends that he was not able to file the appropriate financial certification because he was not able to secure the necessary bank documents to do so. Respondent also contends that he has repeatedly contacted his bank to expedite delivery of such documents. As such, respondent contends that he did not ignore his responsibility. However, the court does not find respondent's contentions credible in light of the fact that: (1) there is no

⁷On June 16, 2006, the court denied respondent's motion for an extension of time within which to file the appropriate financial certification due January 10 and April 10, 2006.

⁸All further references to "standard[s]" are to this source.

evidence as to when, if at any time, respondent contacted his bank prior to the January 10 and April 10, 2006, reporting deadlines; (2) respondent did not submit any declarations from bank representatives regarding his attempts to obtain bank records or the bank's failure to provide these records with either of his oppositions to the State Bar's motion; and (3) the court notes that the engagement letter between respondent and the Heritage Law Group ("HLG") regarding services HLG was to provide respondent related to his client trust accounts is dated July 7, 2006, nearly six months after respondent's first appropriate financial certification was due. As such, the court gives no mitigating credit to respondent's contentions.

B. Aggravation

In aggravation, respondent has a record of two prior impositions of discipline. (Standard 1.2(b)(i).)

1. On November 18, 2003, the Supreme Court filed an order in Supreme Court matter S118405 (State Bar Court Case No. 01-O-03956) suspending respondent from the practice of law for two years; staying execution of said suspension; and placing respondent on probation for two years on conditions of probation, including 75 days' actual suspension. In this prior disciplinary matter, respondent stipulated to culpability in one client matter. Respondent stipulated that he: (1) committed acts involving moral turpitude, dishonesty and corruption by making a false statement and by making a misrepresentation to his client; (2) committed acts of moral turpitude, dishonesty and corruption by misappropriating approximately \$1,395.90 in client funds; (3) violated rule 3-700(D)(1) of the Rules of Professional Conduct of the State Bar of California by wilfully failing to promptly deliver property held by him as requested by his client and her mother; and (4) failed to cooperate in a State Bar disciplinary investigation in violation of section 6068, subdivision (i), by not providing a written response to an investigator's letters or otherwise participating in a disciplinary investigation. In mitigation, respondent had no prior record of discipline. In aggravation, respondent's misconduct was followed by or surrounded by dishonesty, bad faith, concealment, overreaching or other violations of the State Bar Act or the Rules of Professional Conduct; the misconduct significantly harmed his client, the

public or the administration of justice; and respondent displayed a lack of cooperation and candor to victims of his misconduct or to the State Bar during disciplinary investigation or proceedings.

2. On September 2, 2005, the Supreme Court issued an order in Supreme Court matter S118405 (State Bar Court Case No. 04-PM-14090) revoking the probation previously ordered in Supreme Court matter S118405 (State Bar Court Case No. 01-O-03956), lifting the previously ordered stay of execution of the suspension in Supreme Court matter S118405 (State Bar Court Case No. 01-O-03956), suspending respondent from the practice of law for one year, staying execution of said suspension, and placing respondent on probation for two years, subject to certain probation conditions, including that respondent be actually suspended for 90 days. In this prior disciplinary matter, respondent was found culpable of failing to submit the quarterly probation report due July 10, 2004, and failing to submit the appropriate financial certification due April 10 and July 10, 2004. In aggravation, respondent had a prior record of discipline; committed multiple acts of wrongdoing; respondent's misconduct was followed by uncharged probation violations; respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct; and respondent displayed a lack of candor to the State Bar. No mitigating circumstances were found by the court.

A further aggravating circumstance in the instant matter is the fact that respondent engaged in multiple acts of misconduct in this matter. (Standard 1.2(b)(ii).)

Respondent's failure to file the appropriate financial certification with his January 10 and April 10, 2006, quarterly reports, or to file a timely motion seeking to modify his probation conditions, after the April 12, 2006, letter to his counsel from the State Bar: (1) noting that respondent had not filed the appropriate financial certification with his January and April 2006 quarterly reports; (2) setting forth that failure to file the required proof of compliance would result in a referral for review and determination of further action; and (3) advising respondent's counsel that respondent should be advised to file an appropriate motion as soon as possible,

demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Standard 1.2(b)(v).)

VI. 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, any actual suspension recommendation in a probation violation matter cannot exceed the full period of suspension previously stayed. (Rules Proc. of State Bar, rule 562.) Thus, standard 1.7(b), which provides that disbarment is the appropriate discipline if an attorney has a record of two prior impositions of discipline, unless the most compelling mitigating circumstances clearly predominate, is not applicable in probation violation matters. (*In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244, 257, fn. 13.) Nevertheless, 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.)

“[A]n attorney who wilfully violates a significant condition of probation . . . can anticipate actual suspension as the expected result, absent compelling mitigating circumstances.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 574.) In this matter, respondent has been found in violation of probation due to his failure to file the appropriate financial certification with his January and April 2006 quarterly reports. This probation condition was significantly related to respondent’s prior misconduct. The court notes that in respondent’s first disciplinary proceeding, Supreme Court matter S118405 (State Bar Court Case No. 01-O-03956), respondent was found, inter alia, to have misappropriated nearly \$1,400.00 in client funds. The Supreme Court suspended respondent from the practice of law for two years; stayed execution of said suspension; and placed respondent on probation for two years on conditions of probation, including, inter alia, 75 days’ actual suspension and the filing of appropriate financial certification. However, respondent failed, inter alia, to comply with the condition regarding the filing of appropriate financial certification. As such, the Supreme Court revoked the probation previously ordered in Supreme Court matter S118405 (State Bar Court Case No. 01-O-03956), lifted the previously ordered stay of execution of the suspension in Supreme Court matter S118405 (State Bar Court Case No. 01-O-03956), suspended respondent from the practice of law for one year, stayed execution of said suspension, and placed respondent on probation for two years, subject to certain probation conditions, including that respondent be actually suspended for 90 days and that he file appropriate financial certification. Nevertheless, respondent, in this third disciplinary matter, has again been found in violation of probation due to his failure to file the appropriate financial certification with two of his quarterly reports. “[R]espondent’s continued unwillingness or inability to comply with the conditions of probation imposed on him by a Supreme Court order ‘demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney’s fitness to practice law and serve as an officer of the court. [Citation.]’ (*In re Kelley* (1990) 52 Cal.3d 487, 495.)” (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) Such conduct also demonstrates that

respondent has failed to undertake measures toward rehabilitation and raises issues of public protection.

Accordingly, given the nature of the probation violation found in this matter, the nature and extent of respondent's prior disciplinary record and the other aggravating circumstances in this matter, the lack of mitigating circumstances herein, and respondent's failure to take any steps to modify his probation conditions prior to the filing of the State Bar's motion to revoke his probation, the court finds good cause to GRANT the State Bar's motion to revoke respondent's probation and to recommend the imposition of a significant period of actual suspension in this matter.

VIII. Discipline Recommendation

The court hereby recommends to the Supreme Court that respondent's probation pursuant to the Supreme Court order in Supreme Court matter S118405 (State Bar Court Case No. 04-PM-14090) be revoked, that the previous stay of execution of the suspension be lifted, and that respondent JUAN CHACON be actually suspended from the practice of law for one year.

It is also recommended that, within one (1) year after the effective date of the discipline herein, respondent must 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, and passage of the test given at the end of that session, unless he has previously done so in connection with Supreme Court matter S118405 (State Bar Court Case No. 04-PM-14090). 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.)

It is further recommended that respondent be ordered to comply with rule 955 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within thirty (30) and forty (40) days, respectively, after the effective date of the Supreme Court

order herein.⁹ **Wilful failure to comply with the provisions of rule 955 may result in revocation of probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal conviction.**

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (“MPRE”) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation within one year after the effective date of the discipline herein. **Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar.**

IX. Order Regarding Inactive Enrollment

The State Bar requests that respondent be involuntarily enrolled inactive pursuant to 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 a probation condition; and it has been recommended that respondent be actually suspended due to said violation.

IT IS THEREFORE ORDERED that respondent JUAN CHACON be involuntarily enrolled as an inactive member of the State Bar of California pursuant to section 6007, subdivision (d). This enrollment will be effective 30 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).)

⁹Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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: August 23, 2006

PAT McELROY
Judge of the State Bar Court