

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

In the Matter of)	Case No. 06-TE-12814-PEM
)	
JAMES JOSEPH BAJGROWICZ,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 49253,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

This matter is before the court on the verified application of the Office of the Chief Trial Counsel of the State Bar of California (State Bar) seeking to involuntarily enroll respondent James Joseph Bajgrowicz as an inactive member of the State Bar pursuant to Business and Professions Code section¹ 6007, subdivision (c) and rule 460 of the Rules of Procedure of the State Bar of California.²

The State Bar is represented by Robert Henderson. Respondent did not appear.

For the reasons stated below, the court finds that the State Bar has proven by clear and convincing evidence that respondent has engaged in misconduct that has caused significant harm to clients and the public, that there is a reasonable likelihood that the harm will recur or continue, and that there is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matters.

IT IS THEREFORE ORDERED that respondent shall be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007,

¹Future references to section are to this source.

²Future references to rules are to this source.

subdivision (c)(1), effective three (3) days after service of this order by mail.

II. PROCEDURAL HISTORY

On June 16, 2006, the State Bar filed an application to have respondents involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(1).

On June 16, 2006, respondent was properly served with the application and supporting documents as required by rule 461(d).

Respondent did not file a response to the application.

The matter was submitted for decision without hearing on July 10, 2006.

III. JURISDICTION

Respondent was admitted to the practice of law in California on June 24, 1971, and has been a member of the State Bar at all times since.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Section 6007, subdivision (c) authorizes the court to order an attorney's involuntary inactive enrollment upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public. In order to find that an attorney's conduct poses a threat of harm, the following three factors must be shown: (1) the attorney has caused or is causing substantial harm to his clients or the public; (2) the injury to the attorney's clients or the public in denying the application will be greater than any injury that would be suffered by the attorney if the application is granted or, alternatively, there is a reasonable likelihood that the harm will continue; and (3) there is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter. (*Conway v. State Bar* (1989) 47 Cal.3d 1107, 1126; *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658, 661.)

In its application, the State Bar avers that respondent has engaged in behavior which has caused or is causing substantial harm to clients and the public and that there is a reasonable likelihood that the harm will reoccur or continue. "[W]here the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shall shift to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue."

(Section 6007, subd. (c)(2)(B).)

The application is based on misconduct alleged in a notice of disciplinary charges (NDC) filed on June 15, 2006, in the State Bar Court. Respondent's inactive enrollment is sought on the basis of the allegations contained in the NDC, declarations under penalty of perjury and exhibits submitted by the State Bar.

A. Facts

Effective January 15, 2006, respondent was not entitled to practice law because he was actually suspended for six months and placed on probation with conditions for four years, among other things. (Supreme Court case no. S137837 (State Bar Court case no. 04-O-13150.) One condition of respondent's disciplinary probation was that he comply with the provisions of the State Bar Act and the Rules of Professional Conduct. Respondent knew that he was not entitled to practice.

Charles Wallace Coppock is a California attorney entitled to practice law. He and respondent shared office space between June 1999 through April 10, 2006.

Prior to January 15, 2006, respondent and Coppock entered into an agreement wherein Coppock would file unlawful detainer actions (UDs) on behalf of California Property Management (CPM), one of respondent's clients, while respondent was suspended. The terms of the arrangement included Coppock's review of termination notices and review and signature of UD complaints prior to filing.

On February 24, 2006, respondent forged Coppock's signature and caused a UD complaint to be filed on February 28, 2006. (*Bannister v. Clawson*, Solano County Superior Court case no. FCM 093199.) Prior to February 24, 2006, respondent gave legal advice and counsel to the client, John Bannister's agent, CPM, regarding the case.

During much of February and early March 2006, Coppock had been very ill and had been unable to come to the office. On March 8, 2006, he met with respondent on another matter. In the course of the meeting, Coppock mentioned that he had not yet received any termination notices to review. Respondent said that a stack of them were nearly ready for Coppock's review and that complaints would be prepared for Coppock's review. At that point, in order to save time

in the filing of the UD's, Coppock suggested that respondent sign Coppock's name to several UD complaints and provided an exemplar of his signature. However, after thinking about it, Coppock immediately told respondent that he insisted on signing his own name on the documents. Respondent and Coppock have different versions of whether Coppock rescinded this signature authorization.

On March 14, 2006, respondent forged Coppock's signature and caused UD complaints to be filed in *Heiman v. Chaironi* and *Mora v. Gammon*. (Solano County Superior Court case nos. 185978 and 185994, respectively.) Prior to March 14, 2006, respondent gave legal advice and counsel to the client, David Heiman's and Rene Mora's agent, CPM, regarding the case.

On March 15, 2006, respondent forged Coppock's signature and caused a UD complaint to be filed. (*Goyuhenetche v. Wade*, Solano County Superior Court case no. 185993.) Prior to March 15, 2006, respondent gave legal advice and counsel to the client, Goyuhenetche's agent, CPM, regarding the case.

On March 16, 2006, respondent forged Coppock's signature and caused UD complaints to be filed on March 17, 2006, in *Stilson v. Hoening* and *Stilson v. Thompson*. (Solano County Superior Court case nos. 186016 and 186017, respectively.) Prior to March 16, 2006, respondent gave legal advice and counsel to the client, Greg Stilson's agent, CPM, regarding the case.

On March 21, 2006, respondent forged Coppock's signature and caused UD complaints to be filed on March 22, 2006 in *Cole-Dutton LLC v. Clifton*, *Puoung v. Morphis/Rocks*. and *Cole-Dutton LLC v. Sherill* (Solano County Superior Court case nos. 186088, 186090 and 186091, respectively.) Prior to March 21, 2006, respondent gave legal advice and counsel to the client, Cole-Dutton LLC's and Dang Puoung's agent, CPM, regarding the case.

It appears that respondent did not have authority to sign Coppock's name or to file the above-named UD's. Coppock was unaware that his name had been signed to the foregoing complaints or that they had been filed. When he discovered this, he immediately took steps to notify CPM, opposing counsel, respondent and the superior court. He also tried to minimize harm to the property owners in whose names the UD's had been filed, contacted the State Bar about the matter, and retained counsel to assist in sorting out the confusion in an orderly and

ethical manner.

B. Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

1. Section 6068, subdivision (a) (Engaging in the Unauthorized Practice of Law)

Section 6068, subdivision (a) requires an attorney to support the Constitution as well as state and federal laws.

Section 6125 requires an individual to be a member of the State Bar in order to practice law in California.

In relevant part, section 6126, subdivision (b) makes a person who has been suspended from membership in the State Bar and practices or attempts to practice, to advertise or to hold him- or herself out as practicing or entitled to practice law guilty of a crime punishable by imprisonment in the state prison or county jail.

By signing respondent's name to pleadings and filing them in court without authorization, respondent held himself out as entitled to practice law and actually practiced law when he was not so entitled. In so doing, he violated sections 6125 and 6126, subdivision (b) and failed to support the laws of this State in wilful violation of section 6068, subdivision (a).

2. Section 6106 (Moral Turpitude)

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by repeatedly signing respondent's name to pleadings and filing them in court without authorization. Accordingly, he or she committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

3. Section 6068, subdivision (k) (Noncompliance with Probation Conditions)

Section 6068, subdivision (k) requires an attorney to comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the

attorney.

The court does not find that there is a reasonable probability that the State Bar will prevail as to this charge pursuant to section 6007, subdivision (c)(2)(C) because the facts supporting this charge are the same as those supporting the alleged violations of sections 6068, subdivision (a) and 6106. It is generally inappropriate to find redundant charged allegations. The appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct. “There is ‘little, if any, purpose served by duplicative allegations of misconduct.’” (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.)

V. DISCUSSION

Section 6007, subdivision (c)(1) provides that an attorney may be involuntarily enrolled inactive upon a finding that the attorney’s conduct poses a substantial threat of harm to the interest of the public or the attorney’s clients. In order to find that an attorney’s conduct poses a substantial threat of harm to the interests of the public or his clients, section 6007, subdivision (c)(2) requires that three factors be found:

- (1) That the attorney has caused or is causing substantial harm to his clients or the public;
- (2) That the attorney’s clients or the public are likely to suffer greater injury if the involuntary inactive enrollment is denied than the attorney is likely to suffer if it is granted, or that there is a reasonable likelihood the harm caused by the attorney will reoccur or continue; and
- (3) That it is reasonably probable that the State Bar will prevail on the merits of the underlying disciplinary matter.

The court concludes that the State Bar has demonstrated each of the above-referenced factors by clear and convincing evidence. Accordingly, the burden of proof shifts to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue. (Section 6007, subd. (c)(2)(B).) Since respondent has not appeared in this matter, he has not met his burden of proof.

a. Reasonable Probability the State Bar Will Prevail

As set forth in the legal conclusions *ante*, the State Bar has satisfied its burden of proof as to the likelihood of its prevailing on the merits of the charges presented. (Section 6007, subd. (c)(2)(C).)

b. Substantial Harm to the Public or the Attorney's Clients

The facts averred indicate harm to the public and to clients. Respondent did not focus on the best interests of the plaintiffs in the UDs or the court, and by extension, the public, when he signed Coppock's name to a series of complaints and filed them without authority. Steps had to be taken to notify parties, opposing counsel, courts and to properly withdraw from representation. Therefore, the court finds that the State Bar's proof has satisfied the requirements of section 6007, subdivision (c)(2)(A).

c. Balancing of Harm to Attorneys and the Public, or the Likelihood that the Harm will Reoccur or Continue

Section 6007, subdivision (c)(2)(B) requires this court to either weigh the relative injuries of both the public and respondent, or, in the alternative, to determine whether there is a reasonable likelihood that the harm will reoccur or continue.³

It is not easy to predict what an attorney accused of misconduct will do in the future. Nevertheless, under section 6007, subdivision (c)(2)(B), that is what the court is called upon to do. Often, courts are only able to draw inferences from a respondent's past conduct in order to conclude as to likely future conduct.

The court notes that respondent has two prior instances of discipline for similar misconduct. In Supreme Court case no. S061675 (State Bar Court case no. 94-O-14770), filed August 4, 1997, discipline was imposed consisting of stayed suspension for two years and until respondent complied with Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof.

³Specifically, in order to sustain the State Bar's position, the evidence must show and the court must find that the attorney's clients or the public are likely to suffer greater injury if the involuntary inactive enrollment is denied than the attorney is likely to suffer if it is granted, or that there is a reasonable likelihood the harm caused by the attorney will reoccur or continue.

Misconduct⁴, standard 1.4(c)(ii), and two years' probation on conditions including 90 days' actual suspension, among other things. Respondent and the State Bar stipulated that, in one client matter regarding a trust and will, respondent violated rules 3-300(A) and (B) of the Rules of Professional Conduct and section 6068, subdivision (m). Aggravating factors were multiple acts of misconduct and harm to clients, the public or the administration of justice.

In Supreme Court case no. S0137837 (State Bar Court case no. 04-O-13150), filed December 16, 2005, discipline was imposed consisting of stayed suspension for three years and until respondent complied with standard 1.4(c)(ii) and four years' probation on conditions including six months' actual suspension, among other things. Respondent and the State Bar stipulated that, between April 2002 and December 2004, in one client matter, respondent violated rule 3-300 of the Rules of Professional Conduct and section 6068, subdivision (i). In aggravation, the prior instance of discipline and multiple acts of misconduct were considered. Substantial professional and community service were considered in mitigation.

In the present case, it appears that respondent repeatedly engaged in misconduct that demonstrated a lack of respect for the rule of law, his profession, the courts and the public. He unnecessarily exposed plaintiffs in the UDs to possible adverse consequences as well as improperly using the legal system and another attorney's name to pursue litigation. This harmful conduct took place while he was actually suspended from the practice of law, a time when, one would think, an attorney's sensitivity to the ethical rules would have been heightened.

Unless prevented from doing so, there is a reasonable likelihood that harm to the public will reoccur or continue, and this court so finds.

d. Conclusion

The State Bar has successfully addressed each of the elements of section 6007, subdivision (c)(2). The court, therefore, believes that the involuntary inactive enrollment of respondent is merited for the benefit of the public, the courts and the legal profession.

⁴Future references to standard or std. are to this source.

VI. ORDER

Accordingly, **IT IS HEREBY ORDERED** that respondent James Joseph Bajgrowicz be enrolled as an inactive member of the State Bar of California, pursuant to Business and Professions Code section 6007, subdivision (c), effective three (3) days after service of this order by mail. (Rule 466(b), Rules Proc. of State Bar.) The State Bar Court must give written notice of this order to respondent and to the Clerk of the Supreme Court of California.

IT IS FURTHER ORDERED that:

1. Within thirty (30) days of the effective date of this order, respondent shall:
 - (a) notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment and his consequent disqualification to act as an attorney and, in the absence of co-counsel, notify the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney or attorneys in his place;
 - (b) deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to the urgency of obtaining the papers or other property;
 - (c) refund any part of any fees paid in advance that have not been earned; and
 - (d) notify opposing counsel in pending matters, or in the absence of counsel, the adverse parties, of his involuntary inactive enrollment, and file a copy of the notice with the court, agency or tribunal before which the matter is pending for inclusion in the respective file or files;
2. All notices required to be given by paragraph 1 of this order shall be given by registered or certified mail, return receipt requested, and shall contain respondent's current State Bar membership records address where communications may thereafter be directed to him;
3. Within forty (40) days of the effective date of this order, respondent shall file with the State Bar Court, an affidavit showing that he has fully complied with the provisions of paragraphs 1 and 2 of this order. The affidavit shall also contain respondent's current

State Bar membership records address where communications may thereafter be directed to him; and

4. Respondent shall keep and maintain records of the various steps taken by him in compliance with this order so that, upon any petition for termination of inactive enrollment, proof of compliance with this order will be available for receipt into evidence. Respondent is cautioned that failure to comply with the provisions of this order may constitute grounds for denying his petition for termination of inactive enrollment or reinstatement.

Dated: July 19, 2006

PAT McELROY
Judge of the State Bar Court