

FILED
APR 29 2011
STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 07-O-10980, etc.-RAH
)	
RICHARD ALAN BRUBAKER,)	ORDER TERMINATING INACTIVE
)	ENROLLMENT UNDER BUSINESS AND
)	PROFESSIONS CODE SECTION 6233;
)	ORDER RE SHOWING OF
Member No. 134130,)	REHABILITATION, PRESENT FITNESS
)	TO PRACTICE, AND PRESENT
)	LEARNING AND ABILITY IN THE
<u>A Member of the State Bar.</u>)	GENERAL LAW

Respondent Richard Alan Brubaker (respondent) is currently participating in the State Bar Court's Alternative Discipline Program (ADP). In connection with such participation, respondent was involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6233,¹ effective June 18, 2010, and continuing until further order of the court. A respondent will remain on involuntary inactive status pursuant to section 6233 for usually at least the period of the actual suspension which will be recommended to the Supreme Court if respondent successfully completes the ADP (the low level of discipline) which is set forth in the court's Confidential Statement of Alternative Dispositions and Orders (Confidential Statement).

¹ Unless otherwise indicated, all further references to section(s) are to the Business and Professions Code.

In this matter, respondent's low level of discipline included a nine month period of actual suspension which would remain in effect until respondent shows 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.² However, the court noted in its Confidential Statement that notwithstanding the provision that respondent's nine month actual suspension continue until he has complied with standard 1.4(c)(ii), if respondent has provided proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) as a condition of the termination of his inactive enrollment under Business and Professions Code section 6233, it will not be recommended that the Supreme Court order respondent to comply with standard 1.4(c)(ii) as a condition to the termination of his nine-month actual suspension in this matter.

On March 30, 2011, following his inactive enrollment for nine months, respondent filed a motion to terminate his inactive enrollment under section 6233, which included a showing of rehabilitation, present fitness to practice, and learning and ability in the general law in accordance with standard 1.4(c)(ii).

On April 11, 2011, the State Bar filed a response to the respondent's motion. The State Bar objected to this issue being determined through a motion, contending instead that the court's determination should be made pursuant to the rules 5.400 et seq. of the Rules of Procedure of the State Bar which pertain to proceedings to demonstrate rehabilitation, present fitness, and learning and ability in the law according to standard 1.4(c)(ii). The court, however, does not agree. In standard disciplinary proceedings in which the Supreme Court has ordered respondent to comply with the requirements of standard 1.4(c)(ii), the court has had no opportunity to observe

² All further references to standard(s) or std. are to this source.

respondent between the commencement of his suspension and the respondent's filing of a standard 1.4(c)(ii) petition. In ADP matters, however, the court has had an opportunity to regularly observe respondent over a significant period of time. As such, a full standard 1.4(c)(ii) proceeding pursuant to rules 5.400 et seq. is not necessary in ADP matters, and it is sufficient to determine respondent's rehabilitation, present fitness to practice, and present learning and ability in the general law through a motion procedure. Based on the language of the Confidential Statement set forth above, such a motion procedure was contemplated by the court, and not objected to by the State Bar, as only the Supreme Court can impose upon respondent a standard 1.4(c)(ii) requirement.

Because the State Bar objected to this issue being determined through a motion, the State Bar responded to respondent's motion as if it were, in fact, two pleadings: (1) a Petition for Relief from Actual Suspension pursuant to standard 1.4(c)(ii), and (2) a Motion to Transfer to Active Enrollment by terminating respondent's involuntary inactive enrollment under section 6233.³ Despite the State Bar's objection, however, it did not oppose either respondent's relief from actual suspension pursuant to standard 1.4(c)(ii) or his transfer to active enrollment.

Accordingly, having reviewed respondent's motion and his declaration, and the other evidence offered in support of his motion, the court concludes that respondent has presented more than the requisite proof to establish his rehabilitation, present fitness to practice, and present learning and ability in the general law. As such, it is ordered that respondent's

³ In its response, the State Bar stated that it "does not oppose an order vacating this Court's Order of Inactive Enrollment pursuant to Business and Professions Code section 6233, and transferring Respondent to active enrollment." The court views this statement as the State Bar not opposing an order terminating respondent's involuntary inactive enrollment under section 6233. The court will not vacate its previous order enrolling respondent involuntarily inactive.

involuntary inactive enrollment under section 6233 be terminated as of the date of the filing of this decision.⁴

IT IS SO ORDERED.

Dated: April 29, 2011



RICHARD A. HONN
Judge of the State Bar Court

⁴ In light of this order, respondent's request for an expedited ruling on his motion is now moot.

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 29, 2011, I deposited a true copy of the following document(s):

ORDER TERMINATING INACTIVE ENROLLMENT UNDER BUSINESS AND PROFESSIONS CODE SECTION 6233; ORDER RE SHOWING OF REHABILITATION, PRESENT FITNESS TO PRACTICE, AND PRESENT LEARNING AND ABILITY IN THE GENERAL

in a sealed envelope for collection and mailing on that date as follows:

by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD A. BRUBAKER
729 MISSION ST #300
SOUTH PASADENA, CA 91030

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

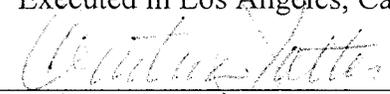
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Charles A. Murray, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 29, 2011.



Cristina Potter
Case Administrator
State Bar Court