STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **FRANCIS JOSEPH McGREW,** **Member No. 122523,** A Member of the State Bar.	**Case No. 07-O-11512-PEM** (07-O-12712); **08-O-11076** (08-O-11077) **(Cons.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this contested disciplinary proceeding, respondent **Francis Joseph McGrew** (respondent) is charged with probation violations and multiple acts of misconduct in two client matters. The charged misconduct includes (1) failing to support the Constitution and laws of the United States and the State of California by practicing law when he was not an active member of the State Bar; (2) committing acts of moral turpitude; (3) failing to return unearned fees; and (4) failing to cooperate in State Bar investigations. The court finds, by clear and convincing evidence, that respondent is culpable of seven of the eight charged counts.

Accordingly, in view of the serious professional misconduct and aggravating factors, including his three prior records of discipline, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing two Notices of Disciplinary Charges (NDCs) against respondent, as follows:

1. Case Nos. 07-O-11512 and 07-O-12712 filed October 19, 2007; and
2. Case Nos. 08-O-11076 and 08-O-11077 filed April 28, 2008.

Respondent filed a response to the 2007 NDC but not to the 2008 NDC. On May 6, 2008, the court consolidated all the matters and ordered respondent to file a response to the 2008 NDC by June 15, 2008. Respondent did not file a response. Therefore, respondent was not allowed to present any evidence at the hearing in regard to case Nos. 08-O-11076 and 08-O-11077.[1]

A two-day trial was held on May 6 and June 25, 2008. The State Bar was represented in this proceeding by Deputy Trial Counsel (DTC) Manuel Jimenez in case Nos. 07-O-11512 and 07-O-12712 and DTC Susan Chan in case Nos. 08-O-11076 and 08-O-11077. Respondent represented himself at trial.

The court took this proceeding under submission on June 25, 2008, after the parties presented their closing arguments.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in California on February 21, 1986, and has since been a member of the State Bar of California.

B. 2007 Notice of Disciplinary Charges (Case Nos. 07-O-11512 and 07-O-12712)

1. The Reed Matter

On March 6, 2007, the California Supreme Court ordered that respondent be placed on actual suspension for 18 months (Supreme Court case No. S149267; State Bar Court Case No. 06-O-10266; 05-O-03659), effective April 5, 2007. On March 6, 2007, the Clerk of the Supreme

[1] However, respondent was allowed to conduct cross examination.

Court properly served a copy of this order on respondent at his State Bar membership records address, maintained by the State Bar pursuant to Business and Professions Code section 6002.1. Respondent was placed on inactive status on April 5, 2007, and has since been on inactive status.

In March 2007, Gary Reed hired respondent to represent him in a criminal matter entitled *People v. Gary Reed,* case No. 02293454-5, in Contra Costa County Superior Court. There was no written attorney client fee agreement.

On March 26, 2007, Reed appeared in court and advised the court that he had retained respondent. The matter was put over for one day for counsel's appearance. On March 27, 2007, respondent appeared on behalf of Reed and attended the court calendared conference. Respondent assisted Reed to enter a plea of not guilty, waive a reading of the complaint and receive discovery, and did not waive time for the preliminary examination. The court scheduled the preliminary examination for April 10, 2007, and further conference for April 6, 2007.

Although respondent knew of his imminent suspension from the practice of law pursuant to the March 6, 2007 Supreme Court Order, respondent did not advise Reed nor the court that he would not be eligible to represent Reed at the upcoming scheduled preliminary examination and conference.

On April 6, 2007, the court held the further conference. Respondent appeared by telephone. The court confirmed the preliminary examination scheduled for April 10, 2007. Respondent again did not advise the court, opposing counsel or his client of his suspension. Respondent did not advise the court that he would be unable to represent Reed at the preliminary examination set for April 10, 2007.

On April 10, 2007, the matter came on calendar for preliminary examination as scheduled. Respondent did not appear. Respondent had called the court and advised the court that he was ill. The court did its own investigation and determined that respondent was not entitled to practice law. At the request of the court, a public defender made a special appearance for respondent and the matter was set for April 17, 2007, for the appearance of counsel.

In court on April 17, 2007, attorney Damone Hale represented Reed and advised him for the first time that respondent could no longer represent him. Respondent sent Reed a letter

dated May 1, 2007, informing Reed of his suspension. Attorney Hale continued to represent Reed throughout his criminal case.

On July 23, 2007, State Bar Investigator John Matney telephoned and spoke to respondent. Matney confirmed respondent's official membership records address. Matney advised respondent of the Reed complaint. Respondent refused to answer any questions regarding the Reed complaint and stated that he had issues with the State Bar. On the same day, Matney wrote to respondent at his official membership records address and requested a response to the State Bar complaint that respondent appeared in court while not licensed to practice law. Respondent received Matney's letter of July 23, 2007, but did not respond.

2. The Wolfe Matter

On March 8, 2007, Marcus Wolfe, also known as Marcus Williams, (Wolfe), was charged with murder in *People v. Theodore Lee and Marcus Wolfe, also known as Marcus Williams,* case No. 525164A & B, Alameda County Superior Court.

Wolfe appeared in court and advised the court he wished to retain his own counsel. The matter was rescheduled for March 12, 2007. On March 12, 2007, attorney Jason Clay made a special appearance for respondent at Wolfe's arraignment and requested that the matter be continued for respondent's appearance. Clay advised the court that respondent had just been retained by Wolfe, but that respondent was detained in a trial in Martinez. The court rescheduled the matter for March 21, 2007, for respondent's appearance and for Wolfe to enter a plea.

On March 21, 2007, respondent appeared on behalf of Wolfe at the scheduled arraignment. Wolfe entered a plea of not guilty and the matter was set for preliminary hearing on April 4, 2007. On April 4, 2007, respondent appeared on behalf of Wolfe. The district attorney was not ready to proceed and requested a continuance. Respondent, on behalf of his client, refused to waive time. Therefore, by law, the court continued the matter for the 10th day – April 5, 2007.

Respondent did not advise the court nor opposing counsel of his imminent suspension, commencing April 5, 2007. On April 5, 2007, the Wolfe matter came on for preliminary

hearing. Respondent appeared before Judge Trina Stanley and was thereafter redirected to Judge Leo Dorado for hearing on all matters. Respondent did not advise Judge Stanley of his suspension. Respondent and the district attorney met with Judge Dorado in chambers. There, the district attorney informed the court of respondent's suspension. On the record, the court questioned respondent regarding his suspension order. Respondent acknowledged that he knew of the suspension order.[2] Respondent then withdrew as counsel for Wolfe and Wolfe represented himself. The district attorney thereafter dismissed the charges against Wolfe.

On May 5 and July 23, 2007, State Bar Investigator Matney wrote to respondent at his official membership records address, requesting a response to the complaint that respondent appeared in court in the *Wolfe* matter when he was not entitled to practice law.

On July 23, 2007, Matney telephoned and spoke to respondent. He confirmed respondent's official membership records address. Respondent otherwise refused to provide any information regarding the Wolfe investigation.

Respondent received Matney's May and July 2007 letters but did not respond.

Count 1 – Unauthorized Practice of Law (§§ 6068, Subd. (a), 6125 and 6126))

Respondent is charged in count one of the 2007 NDC with a violation of Business and Professions Code section 6068, subdivision (a),[3] which provides that a member of the State Bar has the duty to support the Constitution and laws of the United States and of the State of California. The State Bar charges that respondent violated section 6068, subdivision (a), by improperly holding himself out as entitled to engage in the practice of law in violation of sections 6125 and 6126.

Section 6125 provides that no person shall practice law in California unless he or she is an active member of the State Bar. Section 6126, subdivision (b), provides that any person who has been involuntarily enrolled as an inactive member of the State Bar or who has been

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[2] Respondent contended at trial that he thought upon advice of counsel, that he could practice law until the close of April 5, 2007.

[3] All future references to "section(s)" are to the Business and Professions Code unless otherwise stated.

suspended from practice and thereafter practices or attempts to practice law, advertises or holds himself out as practicing or otherwise entitled to practice law is guilty of a crime.

Charging an attorney with a violation of the duty to support the constitution and laws, by reason of the attorney's violation of the statutes prohibiting practicing law while suspended, provides the basis for imposition of discipline for the unauthorized practice of law. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574-575; *In the Matter of Tady* (Review Dept.1992) 2 Cal.State Bar Ct. Rptr. 121, 126.)

By his telephone appearance at the April 6, 2007 court conference on behalf of Reed, while he was suspended from the practice of law, respondent held himself out to the court, opposing counsel, and his client as entitled to practice law and actually practiced law when he was not an active member of the State Bar in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

Count 2 – Moral Turpitude (§ 6106)

Respondent is charged in count two of the 2007 NDC with a violation of section 6106, which provides that the commission of an act involving moral turpitude, dishonesty or corruption constitutes grounds for disbarment or suspension. The State Bar charges that respondent committed an act of moral turpitude, dishonesty or corruption by misleading Reed and the court by creating the impression that he was entitled to practice law.

Moral turpitude has been described as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Craig* (1938) 12 Cal.2d 93, 97.) It has been described as any crime or misconduct without excuse (*In re Hallinan* (1954) 43 Cal.2d 243, 251) or any dishonest or immoral act. Crimes which necessarily involve an intent to defraud, or dishonesty for personal gain, such as perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472), grand theft (*In re Basinger* (1988) 45 Cal.3d 1348, 1358) and embezzlement (*In re Ford* (1988) 44 Cal.3d 810) may establish moral turpitude. Although an evil intent is not

necessary for moral turpitude, at least gross negligence of some level of guilty knowledge is required. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.)

By misrepresenting to the court, his client, and opposing counsel that he was entitled to practice law when he was not an active member of the State Bar, respondent committed an act, or acts, involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

Count 3 – Failure to Return Unearned Fees (Rules Prof. Conduct, Rule 3-700(D)(2))[4]

Rule 3-700(D)(2) requires an attorney whose employment has terminated to refund promptly any part of a fee paid in advance that has not been earned.

Respondent was hired by Reed in March 2007 and had to withdraw from employment in April due to his suspension. Reed testified he paid respondent $7,500 in cash. Respondent, however, stated he was paid only $3,000 by Reed's mother. Because there is no clear and convincing evidence as to how much Reed actually paid respondent and how much work respondent did on the case before he had to withdraw, the court could not conclude that respondent willfully violated rule 3-700(D)(2).

Count 4 – Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By failing to respond to Investigator Matney's letter of July 23, 2007, by failing to provide information during the July 23, 2007 telephone call, and by otherwise failing to respond to the State Bar investigation of this complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

Count 5 – Unauthorized Practice of Law (§§ 6068, Subd. (a), 6125 and 6126)

By failing to advise the court, Wolfe and opposing counsel on April 4, 2007, of his imminent suspension, and by appearing in court on behalf of Wolfe on April 5, 2007, when he was not entitled to practice law, respondent willfully held himself out as practicing law or

[4] References to rule are to the current Rules of Professional Conduct, unless otherwise noted.

entitled to practice law or otherwise practicing law when he was not entitled to do so, in willful violation of sections 6125 and 6126, and 6068, subdivision (a).

Count 6 – Moral Turpitude (§ 6106)

By representing to the court on April 4, 2007, that he would be ready to proceed with the preliminary hearing the following day, when, in fact, he would be suspended commencing the following day, and by appearing in court on April 5, 2007, on behalf of Wolfe when he was not entitled to practice law, respondent committed acts of moral turpitude, in willful violation of section 6106.

Count 7 – Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to respond to the State Bar's May 5 and July 23, 2007 letters, by failing to provide any information in response to Investigator Matney's telephone call of July 23, 2007, and by otherwise failing to respond to the State Bar investigation of the Wolfe matter, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

C. 2008 Notice of Disciplinary Charges (Case Nos. 08-O-11076 and 08-O-11077)

1. 2005 Probation Matter (S131686)

On May 19, 2005, the California Supreme Court filed an order (S131686; State Bar Court case No. 03-0-04373; 03-H-02104) suspending respondent from the practice of law for one year and until respondent makes restitution to Eddie Tobias in the amount of $2,500, staying imposition of suspension, and placing respondent on probation for three years, actually suspending respondent for 30 days, and requiring respondent to comply with specified conditions of probation. The discipline was based upon a stipulation that respondent signed, and the stipulation contained all of the probation conditions.

Notice of the order was duly and properly served upon respondent's counsel in the manner prescribed by California Rules of Court, rule 8.532(a), at respondent's counsel's address.

The Supreme Court order became effective on June 18, 2005, and remained in full force and effect at all times thereafter. Respondent had notice of and was aware of the May 19, 2005, Supreme Court order. Respondent has remained on probation at all times since June 18, 2005.

The California Supreme Court ordered that respondent comply with certain probation conditions, including, but not limited to:

1. Submit 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 he had complied with the State Bar Act and the Rules of Professional Conduct;
2. Furnish to a licensed medical laboratory of his choice upon request of the Office of Probation such blood and/or urine samples as may be required to show that respondent has abstained from the use of alcohol and drugs. Said samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Upon the Office of Probation's request, respondent shall cause the laboratory to provide the Office of Probation at respondent's expense a screening report based on said samples; and
3. Attend Alcoholics Anonymous, Narcotics Anonymous, or other therapy/counseling of his choice, or combination thereof, during the period of probation, as follows: once a week during the first year of probation, twice a month during the second year of probation, and once a month during the third year of probation.

Respondent did not comply with these probation conditions. He failed to file the quarterly reports that were due no later than January 10, 2006, October 10, 2006, January 10, 2007, October 10, 2007, and January 10, 2008. To date, respondent has not filed any of these reports.

Respondent also failed to timely file quarterly reports on or before January 10th, April 10th, July 10th, and October 10th, of every year during the period of probation. Respondent submitted the October 10, 2005, report on or about December 1, 2005; the April 10, 2006, report

on or about April 20, 2006; the July 10, 2006, report on or about July 17, 2006; and the July 10, 2007, on or about July 13, 2007.

On July 19, 2006, the Office of Probation instructed respondent to submit himself to a drug test and cause the laboratory to send results directly to the Office of Probation. Respondent failed to cause any drug test results to be submitted to the Office of Probation. To date, respondent has failed to submit to a drug test and failed to cause any drug test results to be submitted to the Office of Probation.

Finally, respondent failed to attend abstinence group meetings and provide proof of attendance at the abstinence-based group meetings with each quarterly report due no later than October 10, 2005; January 10, April 10, July 10, and Ocotber 10, 2006; January 10, April 10, and October 10, 2007; and January 10, 2008. Respondent did, however, provide proof of attendance in his July 10, 2007 quarterly report.

2. 2007 Probation Matter (S149267)

On March 6, 2007, the California Supreme Court filed an order (S149267; State Bar Court case No. 06-O-10266; 05-O-03659) suspending respondent from the practice of law for three years, staying imposition of the suspension, and placing respondent on probation for three years, actually suspending respondent for 18 months, and requiring respondent to comply with specified conditions of probation. The discipline was based upon a stipulation that respondent had signed, and the stipulation contained all of the probation conditions.

Notice of the order was duly and properly served upon respondent's counsel in the manner prescribed by California Rules of Court, rule 8.532(a). The Supreme Court order became effective on April 5, 2007, and remained in full force and effect at all times thereafter. Respondent had notice and was aware of the March 6, 2007, Supreme Court order. Respondent has remained on probation at all times since April 5, 2007.

The California Supreme Court ordered that respondent comply with certain probation conditions, including, but not limited to:

1. Within 30 days from the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation;

2. Submit 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 he had complied with the State Bar Act and the Rules of Professional Conduct;

3. Attend an abstinence-based self-help group at least four meetings per month at the rate of one per week during the first two years of the probation period; and two meetings per month at the rate of one every other week during the third year of probation;[5]

4. Furnish to a licensed medical laboratory of his choice upon request of the Office of Probation such blood and/or urine samples as may be required to show that respondent has abstained from the use of alcohol and drugs. Said samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Upon the Office of Probation's request, respondent shall cause the laboratory to provide the Office of Probation at respondent's expense a screening report based on said samples;

5. Subject to assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions. Moreover, respondent must personally return within 12 hours any telephone call from the Office of Probation concerning blood and/or urine testing; and

6. During the period of actual suspension, respondent must not:

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[5] There is no fourth year of probation as alleged in the 2008 NDC.

- Render legal consultation or advice to a client;
- Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- Appear as a representative of a client at a deposition or other discovery matter;
- Negotiate or transact any matter for or on behalf of a client with third parties;
- Receive, disburse, or otherwise handle a client's funds; or
- Engage in activities which constitute the practice of law.

Respondent must declare under penalty of perjury that he has complied with this provision in any quarterly report required to be filed with the Office of Probation, pertaining to periods in which the respondent was actually suspended from the practice of law.

Respondent complied with the probation condition that he was to contact the Office of Probation within 30 days from April 5, 2007. On April 27, 2007, respondent contacted the Office of Probation and spoke with Probation Deputy Eddie Esqueda regarding his probation conditions.

However, respondent did not comply with the other probation conditions. He failed to file the quarterly reports that were due no later than July 10, 2007, October 10, 2007, and January 10, 2008. To date, respondent has not filed any of these reports.

On August 14, 2007, the Office of Probation left a phone message and instructed respondent to submit himself to a drug test and cause the laboratory to send results directly to the Office of Probation. Respondent failed to cause any drug test results to be submitted to the Office of Probation. To date, respondent has failed to submit to a drug test and failed to cause any drug test results to be submitted to the Office of Probation.

Respondent failed to attend abstinence group meetings and provide proof of attendance at the abstinence-based group meeting with each quarterly report that were due no later than July

10, 2007, October 10, 2007, and January 10, 2008. Respondent submitted a July 10, 2007 report verifying his attendance at an abstinence group but that was as to the 2005 probation matter. Respondent testified that after the O'Conner case he decided that he did not have to attend any abstinence based self-help programs and thus he did not. To date, respondent has not attended nor submitted proof of attendance at an abstinence-based group meeting with any quarterly report to be filed with the Office of Probation.

On August 14, 2007, the Office of Probation telephoned respondent but was unable to reach him. The assigned probation deputy left a voicemail message. Respondent failed to return the phone call within 12 hours as required under the terms of probation. Respondent did not do so by said date or at any time thereafter.

Finally, to date, respondent has not filed the July 10, 2007, October 10, 2007, and January 10, 2008, quarterly reports nor provided proof of compliance of restrictions regarding the practice of law while on actual suspension.

Count 1: Failure to Comply With Probation Conditions (§ 6068, Subd. (k))

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

Respondent failed to comply with his probation conditions under S131686 in the 2005 probation matter, in willful violation of section 6068, subdivision (k), by failing to do the following:

- File quarterly reports that were due January 10, 2006, October 10, 2006, January 10, 2007, October 10, 2007, and January 10, 2008;
- Timely file quarterly reports that were due on October 10, 2005, April 10, 2006, July 10, 2006, and July 10, 2007;
- Submit to a drug test as requested in July 2006 and to cause any drug test results to be submitted to the Office of Probation; and
- Attend abstinence group meetings and provide proof of attendance at the abstinence-based group meetings with each quarterly report due no later than October 10, 2005; January 10, April 10, July 10, and Ocotber 10, 2006; January 10, April 10, and

October 10, 2007; and January 10, 2008. Respondent did, however, provide proof of attendance in his July 10, 2007 quarterly report.

Count 2: Failure to Comply With Probation Conditions (§ 6068, Subd. (k))

Respondent failed to comply with his probation conditions under S149267 in the 2007 probation matter,[6] in willful violation of section 6068, subdivision (k), by failing to do the following:

- File quarterly reports that were due July 10, 2007, October 10, 2007, and January 10, 2008;
- Submit to a drug test as requested in August 2007 and to cause any drug test results to be submitted to the Office of Probation;
- Attend abstinence group meetings and provide proof of attendance at the abstinence-based group meetings with each quarterly report due July 10, 2007, October 10, 2007, and January 10, 2008;
- Return the August 14, 2007 phone call from the Office of Probation within 12 hours or at any time thereafter; and
- File the July 10, 2007, October 10, 2007, and January 10, 2008, quarterly reports or provide proof of compliance of restrictions concerning the practice of law while on actual suspension.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,[7] stds. 1.2(e) and (b).)

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[6] Respondent testified that after July 2007 he stopped complying with the conditions of probation because he was frustrated and confused as to whether he had to submit separate quarterly reports for the two cases. However, given the clear instructions from the Office of Probation in its April 27, 2007 and August 14, 2007 letters, this contention of frustration and confusion is inexcusable. His other arguments for his failure to comply with his probation conditions are also rejected. Respondent has alcohol and drug abuse issues which he is not dealing with.

[7] Future references to standard(s) or std. are to this source.

A. Mitigation

There was no mitigating evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).) Respondent's claimed mistaken belief that he could practice law until the end of business day on April 5, 2007, is unreasonable and without merit.

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent's three prior records of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

1. On November 8, 2002, respondent was privately reproved with conditions for a misdemeanor violation (involved in a car accident resulting in damage to property and failed to stop at the scene of the accident) and failure to return unearned fees. (State Bar Court Case No. 02-C-10099; 02-O-13663.) Respondent stated at the time that he was suffering from a chemical dependency problem.
2. On June 18, 2005, respondent was suspended for one year and until he made restitution, execution stayed, and placed on probation for three years with conditions, including 30 days of actual suspension. Respondent stipulated to failing to promptly refund client fees and failing to comply with the conditions attached to his previous private reproval. (Supreme Court case No. S131686; State Bar Court case No. 03-O-04373; 03-H-02104.)
3. On April 5, 2007, respondent was suspended for three years, execution stayed, and placed on probation for three years with conditions, including 18 months' actual suspension and until he complied with standard 1.4(c)(ii). Respondent stipulated to violating his probation conditions imposed in S131686 and misleading the court in a criminal matter. His probation violations are similar to the ones in this instant matter, such as failure to submit quarterly reports, failure to participate in therapy/counseling, and failure to submit to drug testing. (Supreme Court case No. S149267; State Bar Court case No. 06-O-10266; 05-O-03659.)

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) He violated several probation conditions and engaged in unauthorized practice of law in two client matters.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with the probation conditions even after the NDCs in the instant proceedings were filed. (Std. 1.2(b)(v).) He has yet to file certain quarterly reports and participate in therapy/counseling for his substance abuse problem.

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7, 2.3, and 2.6.)

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(b) provides "If a member is found culpable of professional misconduct in any proceeding which discipline may be imposed and the member has a record of two prior

impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate." Respondent has three prior records of discipline and no mitigation.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court, a client or another person must result in actual suspension or disbarment, depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

Standard 2.6 provides that culpability of unauthorized practice of law will result in suspension or disbarment, depending on the gravity of the offense or the harm to the client.

Respondent has been found culpable of serious misconduct involving unauthorized practice of law, repeated violations of his probation conditions and failure to cooperate with the State Bar.

Respondent argues that he has practiced law for 22 years, that he is remorseful and that the appropriate level of discipline should be an agreement in lieu of discipline. But respondent has committed professional misconduct in the last seven years. The court rejects respondent's contentions.

The State Bar urges disbarment, citing *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63,[8] *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, *In the Matter of Rose* (Review Dept. 1994) 3 Cal.State Bar Ct. Rptr. 646 and *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal.State Bar Ct. Rptr. 480 in support of its recommendation.

In *Hunter*, the attorney was disbarred for probation violations and misconduct in four client criminal law matters, which included failure to make nine scheduled court appearances, failure to file pleadings, failure to comply with six court orders, failure to perform services competently, and failure to refund an unearned fee. He was held in contempt four times and had

[8] The State Bar's citations of "*In the Matter of Hunter* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 382" and "*In the Matter of Rose* (Review Dept. 1994) 3 Cal.State Bar Ct. Rptr. 192" in its pretrial statements are incorrect.

body attachments and/or arrest warrants issued against him three times. The Review Department did not find that the attorney's wrongdoing constituted a pattern of misconduct, but it did find that the attorney's prior and present misconduct demonstrated his extreme indifference to complying with court orders. The court found that the attorney's prior discipline had very little impact on his behavior and demonstrated his inability to conform his conduct to ethical norms. Accordingly, application of standard calling for disbarment (Std. 1.7(b)) for third imposition of discipline was appropriate.

Similarly, respondent has not learned from his mistakes and is incapable of conforming his conduct to ethical standards.

In *Rose,* the attorney had four prior records of discipline and a history of serious professional misconduct during 18 of the 26 years of his practice, including client abandonments, probation violations and failure to file timely the affidavit required by the Rules of Court, rule 955. As a result, the Review Department found that he had ample opportunity to conform his conduct to the ethical requirements of the profession, but had repeatedly failed or refused to do so in his 26 years of practice and that, therefore, disbarment was appropriate.

"[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 failures to file quarterly reports and comply with other probation conditions warrant significant discipline.

The court also finds guidance in *Morgan v. State Bar* (1990) 51 Cal.3d 598. The Supreme Court disbarred an attorney who engaged in the unauthorized practice of law. The court held that disbarment was the appropriate level of discipline, noting that he had been found culpable in four disciplinary proceedings, his misconduct demonstrated an indifference to the Supreme Court's disciplinary orders, had been under suspension for an accumulated period of two years and on probation for an accumulated period of 11 years during his 31 years as an

attorney. Although he had five good character witnesses and made contributions to his community, he did not demonstrate that compelling mitigating circumstances predominated in the case. Disbarment is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders of the Supreme Court. (*Id.* at p. 607.) The attorney was thus disbarred.

In determining the degree of discipline, the Supreme Court considers an attorney's prior disciplinary record and the harm resulting from his misconduct. "Significantly, in examining the combined record of this disciplinary proceeding and [the attorney's] prior discipline, we are confronted not by isolated or uncharacteristic acts but by 'a continuing course of serious professional misconduct extending over a period of several years.' [Citation.] We are therefore concerned with what appears to have become an habitual course of misconduct. We believe that the risk of [the attorney] repeating this misconduct would be considerable if he were permitted to continue in practice. [Citation.] As [the attorney] has previously demonstrated, the public and the legal profession would not be sufficiently protected if we merely, once again, suspended [him] from the practice of law. [Citation.]" (*McMorris v. State Bar* (1983) 35 Cal.3d 77, 85.) The Supreme Court's reasoning is equally applicable in this case.

Respondent here is not a candidate for suspension and/or probation. He has engaged in a continuous course of misconduct in the past seven years involving four client matters, probation violations, and unauthorized practice of law. In fact, he has been on probation for a period of seven years during his 22 years as an attorney. Like *McMorris*, the risk of respondent repeating this misconduct would be considerable if he were permitted to continue in practice.

Moreover, respondent's failure to comply with his professional duties has repeatedly burdened the resources of this court and the State Bar disciplinary system, also a matter of great concern to the court. Respondent had ample opportunity to conform his conduct to the ethical requirements of the profession, but has repeatedly failed or refused to do so. Probation and suspension have proven inadequate in the past to prevent continued misconduct. (See *In the Matter of Rose, supra,* 3 Cal. State Bar Ct. Rptr. 646.)

Lesser discipline than disbarment is inadequate because there are no extenuating circumstances that clearly predominate in this case. The serious, similar and prolonged nature of the misconduct in this and the three prior instances of discipline suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Moreover, it is evident that the prior instances of discipline have not served to rehabilitate respondent or to deter him from further misconduct. He has not learned from the past despite repeated opportunities to do so. Having considered the evidence, the standards, other relevant law and respondent's serious ongoing substance abuse problem, the court believes, unfortunately, that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

VI. Discipline Recommendation

Accordingly, the court hereby recommends that respondent **Francis Joseph McGrew** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20(a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Willful failure to comply with the provisions of rule 9.20 may result in denial of reinstatement or criminal conviction.

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 Regarding Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: September 16, 2008

PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; 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 San Francisco, on September 16, 2008, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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 San Francisco, California, addressed as follows:

FRANCIS JOSEPH MCGREW
3505 KEMPTON WAY #8
OAKLAND, CA 94612

☐ 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:

MANUEL JIMENEZ, Enforcement, San Francisco
SUSAN CHAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 16, 2008.

George Hue
Case Administrator
State Bar Court