



**FILED**

**OCT 30 2008**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

1 THE STATE BAR OF CALIFORNIA  
OFFICE OF PROBATION  
2 TERRIE GOLDADE, No. 155348  
SUPERVISING ATTORNEY  
3 1149 South Hill Street  
Los Angeles, California 90015-2299  
4 Telephone: (213) 765-1000

**PUBLIC MATTER**

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THE STATE BAR COURT  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of ) Case No.: *08-PM-14212*  
Thomas R. Mitchell, )  
No. 199953 ) MOTION TO REVOKE PROBATION;  
A Member of the State Bar ) MEMORANDUM OF POINTS AND AUTHORITIES;  
 ) DECLARATION(S) OF Eddie Esqueda; EXHIBITS 1  
 ) THROUGH 3; PROBATION REVOCATION  
 ) RESPONSE FORM [Rule 560, et seq., Rules of Proc.  
 ) of the State Bar]

**TO: The State Bar Court and Thomas R. Mitchell, Respondent:**

**PLEASE TAKE NOTICE THAT** the State Bar of California, Office of Probation,  
hereby moves pursuant to Rules of Procedure of the State Bar of California, rules 560, et seq.,  
to revoke the probation imposed upon Thomas R. Mitchell ("Respondent") in prior disciplinary  
case no. 05-O-01163 and to impose upon Respondent the entire period of suspension of one  
year previously stayed by order no. S153540 of the Supreme Court filed on August 3, 2007.  
The State Bar further requests that Respondent be ordered to comply with rule 9.20, California  
Rules of Court, and that Respondent be placed on involuntary inactive enrollment pursuant to  
Business and Professions Code section 6007(d).

This motion is based upon the factual allegations that Respondent has violated the terms  
of probation imposed on Respondent by the aforementioned order, as follows:

1. As a condition of probation, Respondent was ordered to comply with the State  
Bar Act and the Rules of Professional Conduct and to report such compliance under

1 penalty of perjury each January 10, April 10, July 10, and October 10 (“quarterly  
2 reports”). Respondent has not complied in that he has failed to file quarterly reports due  
3 January 10, April 10, July 10, and October 10, 2008.

4 2. As a condition of probation, Respondent was ordered to, within one year of the  
5 effective date of his discipline—by September 2, 2008, provide to the Office of Probation  
6 proof of attendance at Ethics School and passage of the test given at the end of that  
7 session. Respondent has not complied in that, to date, Respondent has failed to attend  
8 Ethics School and/or provide proof to the Office of Probation of his passage of the test  
9 given at the end of that session.

10 This motion is also based on the attached Memorandum of Points and Authorities, the  
11 attached Declaration of Eddie Esqueda, the attached exhibits, and all documents on file with the  
12 court in this matter.

13 In accordance with rules 563(a) and 563(d) of the Rules of Procedure of the State Bar of  
14 California, if Respondent responds to this motion, the Office of Probation requests that a  
15 hearing be held unless the Court, based upon this motion and the response alone, determines  
16 that imposition of the discipline as requested above is warranted.

17 **NOTICE - FAILURE TO RESPOND**

18 YOUR FAILURE TO FILE A RESPONSE WITHIN TWENTY (20) DAYS OF  
19 SERVICE OF THIS MOTION WILL CONSTITUTE AN ADMISSION OF THE  
20 FACTUAL ALLEGATIONS CONTAINED IN THIS MOTION AND MAY  
21 RESULT IN THE IMPOSITION OF ACTUAL SUSPENSION PURSUANT TO  
22 THE UNDERLYING DISCIPLINARY ORDER. ALSO, FAILURE TO  
23 REQUEST A HEARING WILL CONSTITUTE A WAIVER OF YOUR RIGHT  
24 TO A HEARING. SEE RULE 563(B)(3) OF THE RULES OF PROCEDURE OF  
25 THE STATE BAR.

26 **NOTICE - INACTIVE ENROLLMENT**

27 YOU ARE HEREBY NOTIFIED THAT, PURSUANT TO BUSINESS AND  
28 PROFESSIONS CODE SECTION 6007(d), IF THE STATE BAR COURT  
RECOMMENDS ACTUAL SUSPENSION ON ACCOUNT OF A PROBATION  
VIOLATION OR OTHER DISCIPLINARY MATTER, YOU MAY BE  
INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE  
BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY  
DISCIPLINE RECOMMENDED BY THE STATE BAR COURT. SEE RULE  
564, RULES OF PROCEDURE OF THE STATE BAR.



MEMORANDUM OF POINTS AND AUTHORITIES

I. RESPONDENT HAS NOT COMPLIED WITH THE TERMS OF PROBATION, AND PROBATION SHOULD BE REVOKED.

By order filed August 3, 2007, the Supreme Court imposed discipline on Respondent in case no. S153540. The Supreme Court suspended Respondent for one year but stayed the execution of the suspension on the condition that Respondent comply with all terms of probation.

As terms of probation, Respondent was ordered to do the following:

1. comply with the State Bar Act and the Rules of Professional Conduct and to report such compliance under penalty of perjury each January 10, April 10, July 10, and October 10 ("quarterly reports"). Respondent has not complied in that he has failed to file quarterly reports due January 10, April 10, July 10, and October 10, 2008.
2. within one year of the effective date of his discipline—by September 2, 2008, provide to the Office of Probation proof of attendance at Ethics School and passage of the test given at the end of that session. Respondent has not complied in that, to date, Respondent has failed to attend Ethics School and/or provide proof to the Office of Probation of his passage of the test given at the end of that session.

Consequently, the State Bar Court should recommend revocation of Respondent's probation.

Attached hereto as Exhibit 1 is a certified copy of Respondent's registration card and Respondent's membership records address history with the State Bar of California. Exhibit 1 will be offered as evidence based upon the certification of Membership Records and Certification to show that Respondent was properly served in this proceeding.

A. Respondent Was Served With The Supreme Court Order.

It is presumed that Respondent was served with the disciplinary order of the Supreme Court imposing a period of probation. The clerks of the reviewing courts have a duty to transmit a copy of all decisions of those courts to the parties. (California Rules of Court, rule 8.532(a).) Pursuant to Evidence Code section 664, there is a rebuttable presumption that such official duties have been regularly performed. Therefore, absent any evidence to the contrary, it

1 is presumed that the Supreme Court clerk has complied with the duty to transmit to Respondent  
2 a copy of the order placing Respondent on probation. (*In re Linda D.* (1970) 3 Cal.App.3d 567;  
3 *People v. Smith* (1965) 234 Cal.App.2d 407; *Fischer v. Lukens* (1919) 41 Cal.App. 358.)

4 B. Respondent's Violation of Probation Was Wilful.

5 Violation of a condition of probation must be wilful to warrant discipline. (*In the*  
6 *Matter of Potack* (1991 Review Dept.) 1 Cal. State Bar Ct. Rptr. 525.) A wilful failure is  
7 demonstrated by a general purpose or willingness to permit the omission and can be proven by  
8 direct or circumstantial evidence. (*Durbin v. State Bar* (1979) 23 Cal.3d 461; *Zitny v. State Bar*  
9 (1966) 64 Cal.2d 787.) It does not require bad faith.

10 The burden of proof in a probation revocation proceeding is the preponderance of the  
11 evidence. (Rule 561, Rules of Procedure.) For purposes of determining culpability, it is  
12 misguided to distinguish between "substantial" and "insubstantial" or "technical" violations of  
13 probation conditions. (*In the Matter of Potack*, supra.) Respondent's failure to comply with  
14 probation demonstrates a lack of concern about professional responsibilities, and therefore,  
15 probation should be revoked.

16 II. RESPONDENT'S VIOLATION OF PROBATION WARRANTS THE IMPOSITION  
17 OF THE FULL STAYED SUSPENSION.

18 In a probation revocation proceeding, the hearing judge may recommend actual  
19 suspension up to the entire period of stayed suspension. (Rule 562, Rules of Procedure.) In this  
20 instant case, the Supreme Court imposed a stayed suspension of one year. Based on the  
21 violation of probation, the hearing judge should now recommend that Respondent be actually  
22 suspended for the full period of stayed suspension.

23 III. UPON A FINDING OF VIOLATION OF PROBATION, THE COURT MAY ORDER  
24 A RESPONDENT PLACED ON INACTIVE STATUS.

25 In a probation revocation proceeding, the hearing judge may order the involuntary  
26 inactive enrollment of a Respondent upon a finding that each of the elements of Business and  
27 Professions Code section 6007(d) have occurred. (Rule 564, Rules of Procedure.) Those  
28 elements have occurred where the Respondent is under an order of stayed suspension with a

1 period of probation and has violated that probation and where the hearing judge recommends a  
2 period of actual suspension. (Business and Professions Code, section 6007(d)(1).) The order  
3 enrolling a respondent inactive shall be effective upon service unless otherwise ordered by the  
4 judge. (Rule 564, Rules of Procedure.)

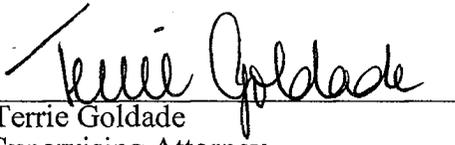
5 CONCLUSION

6 The Supreme Court has stayed Respondent's suspension and placed him on probation,  
7 and Respondent has violated that probation. The State Bar requests that the hearing judge  
8 recommend revocation of Respondent's probation and the imposition of one year of actual  
9 suspension. Furthermore, the hearing judge should order Respondent placed on involuntary  
10 inactive enrollment until the suspension is effective and order Respondent to comply with Rule  
11 9.20, California Rules of Court.

12 Respectfully submitted,

13 THE STATE BAR OF CALIFORNIA  
14 OFFICE OF PROBATION

15  
16 Dated: October 29, 2008

17 BY:   
18 Terrie Goldade  
19 Supervising Attorney  
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DECLARATION OF EDDIE ESQUEDA

I, Eddie Esqueda, declare:

1. I am over eighteen years of age and not a party to the above entitled action. All statements made herein are true and correct and based upon my personal knowledge; if necessary, I could and would testify thereto.

2. I am employed as a Probation Deputy for the Office of Probation, State Bar of California. There are generally six employees in the Office of Probation: a supervising attorney, an administrative assistant, and four Probation Deputies. As of September 30, 2008, the Office of Probation was monitoring 915 matters.

3. My duties include establishing and maintaining files for those attorneys who have, as a result of State Bar disciplinary proceedings, been ordered either by the State Bar Court or the California Supreme Court to comply with certain terms and conditions of probation imposed upon them.

4. In my capacity as Probation Deputy, I maintain and monitor a file concerning Thomas R. Mitchell, hereinafter "Respondent", in keeping with the custom and practice in this office.

5. It is the custom and practice of this office to maintain, in each Respondent's file, a copy of the court orders by which said Respondent is placed on probation. I am informed and believe that it is the custom and practice of the California Supreme Court to serve on each Respondent the disciplinary orders imposing discipline, including actual and stayed suspension and probation, on said Respondent.

6. It is also the custom and practice of this office: (a) to mail all correspondence sent to a Respondent, by first class mail, to the address on file with the Membership Records Department of the State Bar and to maintain a copy in the file; (b) to mail said letters on the date noted thereon and to place any such mail which is returned as undeliverable in the file; (c) to place in the file all documents received from a Respondent and others concerning

1 Respondent; and (d) to memorialize all contacts made or received by any Office of Probation  
2 employee in this office concerning a Respondent and place such memoranda in the file.

3 7. A review of the probation file on Thomas R. Mitchell reflects that a disciplinary  
4 order imposing probation is contained therein. A copy of said order, filed on August 3, 2007, is  
5 attached hereto and incorporated by reference as Exhibit 2. A copy of the Decision filed March  
6 6, 2007 is also included within Exhibit 2 for the Court's convenience. Pursuant to said order,  
7 the terms and conditions of probation imposed on Respondent include the following:

8 a. comply with the State Bar Act and the Rules of Professional Conduct and to  
9 report such compliance under penalty of perjury each January 10, April 10, July 10, and  
10 October 10 ("quarterly reports"). Respondent has not complied in that he has failed to  
11 file quarterly reports due January 10, April 10, July 10, and October 10, 2008.

12 b. within one year of the effective date of his discipline—by September 2, 2008,  
13 provide to the Office of Probation proof of attendance at Ethics School and passage of  
14 the test given at the end of that session. Respondent has not complied in that, to date,  
15 Respondent has failed to attend Ethics School and/or provide proof to the Office of  
16 Probation of his passage of the test given at the end of that session.

17 8. As Custodian of Records, I have reviewed the entire contents of the probation  
18 file on Thomas R. Mitchell which reflects that the disciplinary orders imposing probation and a  
19 letter confirming the terms and conditions of probation, including suspension, were provided to  
20 the Respondent on September 6, 2007.

21 9. The following documents, attached hereto and incorporated by reference  
22 collectively as Exhibit 3, are contained in the Office of Probation file maintained on

23 Respondent:

24 a. initial letter mailed to Respondent dated September 6, 2007 outlining the  
25 terms and condition of his probation.

26 b. letter mailed to Respondent dated September 8, 2008 noting that  
27 Respondent's first report due January 10, 2008, and subsequent reports had not been received.

28 c. Ethics School verification form dated September 29, 2008.





Counsel for Respondent	(for Court's use)
In the Matter of	Case No(s). _____ -PM- _____
Bar #  A Member of the State Bar of California ("Respondent")	<b>PROBATION REVOCATION RESPONSE (Rule 563, Rules of Procedure)</b>

As required by rule 563(b)(1), Rules of Procedure, Respondent attaches one or more declarations to this form which set forth the facts upon which my opposition to the motion to revoke probation is based.

1)  Respondent requests a hearing in this matter and intends to participate.

**OR**

2)  Respondent requests that this proceeding be resolved on the pleadings without any hearing.

If you checked box (1), check one of the following:

- (a)  Respondent requests the opportunity to cross-examine the person(s) who executed declaration(s) in support of the motion to revoke my probation.
- (b)  Respondent does not request the opportunity to cross-examine the person(s) who executed declaration(s) in support of the motion to revoke my probation.

Signature: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)



THE STATE BAR  
OF CALIFORNIA

MEMBER SERVICES CENTER

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

TELEPHONE: 888-800-3400

October 7, 2008

TO WHOM IT MAY CONCERN:

I, Kath Lambert, Custodian of Membership Records of the State Bar of California, hereby certify that attached is a full, true and correct copy of the registration card on file THOMAS RALPH MITCHELL, #199953 in the Membership Records Department of the State Bar of California.

THE STATE BAR OF CALIFORNIA

Kath Lambert  
Custodian of Membership Records

000001

THE STATE BAR OF CALIFORNIA  
REGISTRATION CARD

INFORMATION PROVIDED ON THIS CARD BECOMES PUBLIC RECORD

REV 10/98

MEMBER'S FULL NAME

MITCHELL

FIRST

THOMAS

MIDDLE

RALPH

LAST

(PLEASE PRINT IN BLACK INK, OR TYPE)  
OFFICE ADDRESS, OR, IF NONE, OTHER ADDRESS FOR STATE BAR PURPOSES:

FIRM NAME

(None)

ADDRESS

5392 BRYANT AVENUE

CITY

OAKLAND

FOREIGN COUNTRY

TELEPHONE

415 641-4529

FAX

E-MAIL

BIRTH DATE

MONTH 12 DAY 30 YEAR 60

PLACE OF BIRTH

OGDEN, UTAH U.S.A.

State Bar Use Only

SCHOOL CODE

SCHOOL CODE

UNDERGRADUATE DEGREE FROM:

University of Utah

LAW DEGREE FROM:

Univ. of Utah College of Law

DATES AND PLACES OF PRIOR ADMISSION TO PRACTICE

March 1992 New York

MAIL RESTRICTION

STATE

Salt Lake City

STATE

Salt Lake City

UTAH

UTAH

TOTAL \$

S.C. \$

W.C. \$

FEE \$

DATE ADMITTED

12.21.98

NUMBER

199953

State Bar Use Only

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I hereby enroll myself as an attorney and counselor at law, promising faithfully to perform all legal duties and comply with the obligations prescribed by the laws of the State of California, and declare the information on the reverse to be correct:

Oath:

I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability.

DATE 21 Dec. 1998 SIGNED

*Thomas R. Mitchell*  
(member signature)

I hereby certify that the foregoing oath, taken by the attorney above named, as required by law, was formally administered by and subscribed to before me.



DATE 12/21/98 SIGNED

*Heather H. Adler*  
Notary Public  
(administering officer signature and title)

Members have the opportunity to have their names withheld from all lists released to outside entities. If you wish to be excluded from these lists please initial this box

There are two kinds of certificates of admission available to you: a standard typed certificate for which there is no additional charge or a customized certificate for \$40. Please indicate which certificate you wish to order. Do not include payment at this time. You will be billed.

**RECEIVED**

STANDARD CERTIFICATE

CUSTOMIZED CERTIFICATE

DEC 23 1998

INFORMATION PROVIDED ON THIS FORM BECOMES PUBLIC RECORD

STATE DEPT OF CALIFORNIA  
MEMBERSHIP RECORDS  
SAN FRANCISCO



THE STATE BAR  
OF CALIFORNIA

MEMBER SERVICES CENTER

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

TELEPHONE: 888-800-3400

October 7, 2008

TO WHOM IT MAY CONCERN:

I, Kath Lambert, Custodian of Membership Records of the State Bar of California, hereby certify that attached is a full, true and correct copy of the address history of on file in the Membership Records Department of the State Bar of California, for THOMAS RALPH MITCHELL, #199953 from December 21, 1998 to the date of this certificate.

THE STATE BAR OF CALIFORNIA

Kath Lambert  
Custodian of Membership Records

000004

MM595R2

MEMBER ADDRESS CHANGE HISTORY

Print Date: 10/07/08

Member #: 199953

Date of Admission: 12/21/1998 Status: Not Eligibl Effective: 9/02/2007

Name: Thomas R. Mitchell

Address:

Eff: 9/19/2005

8316 Valiant Dr  
Salt Lake City UT 84121

The Law Office of T R Mitchell Esq. Eff: 6/22/2005

5397 Bryant Ave  
Oakland CA 94618 1429

Law Ofc T R Mitchell

Eff: 6/15/2004

5397 Bryant Ave  
Oakland CA 94618

Peavey Law Firm

Eff: 11/11/2003

160 Spear St #214  
San Francisco CA 94105

Eff: 10/06/2003

Peavey Law Firm  
160 Spear St #214  
San Francisco CA 94105

Eff: 5/14/2002

5397 Bryant Ave  
Oakland CA 94618

Eff: 3/16/1999

872 Peralta Ave  
San Francisco CA 94110

000005

MM595R2

MEMBER ADDRESS CHANGE HISTORY

Print Date: 10/07/08

Member #: 199953

Date of Admission: 12/21/1998 Status: Not Eligibl Effective: 9/02/2007

Name: Thomas R. Mitchell

Address:

Eff:12/21/1998

5397 Bryant Ave  
Oakland CA 94618

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