

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 08-PM-14213-RAP
)	
PAUL JOHN MAJORS)	DECISION INCLUDING INVOLUNTARY
)	INACTIVE ENROLLMENT ORDER
Member No. 153641)	
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

The Office of Probation (OP), represented by Supervising Trial Counsel Terrie Goldade, filed a motion pursuant to Business and Professions Code sections 6093, subdivision (b) and 6093, subdivision (c)¹ and rules 560 et seq. of the Rules Proc. of State Bar² to revoke the probation of respondent Paul John Majors. Respondent did not participate in this proceeding although he was properly served with the motion by certified mail, return receipt requested, at his State Bar membership records address.

For the reasons stated below, the court finds by a preponderance of the evidence that respondent wilfully failed to comply with the terms of his probation. (Section 6093, subd. (c).) As a result, the court grants OP’s motion to revoke his probation and its request to involuntarily enroll him as an inactive member of the State Bar pursuant to section 6007, subdivision (d). The court recommends that respondent’s probation be revoked, that the previously-ordered stay be lifted and that he be actually suspended from the practice of law for one year and until he makes

¹Future references to section are to this source.

²Future references to rule are to this source.

restitution; that he be placed on probation for three years on conditions; and that he be suspended for two years and until he makes restitution and complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, that execution of the suspension be stayed, among other things.

FINDINGS OF FACT

Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 26, 1991, was a member at all times pertinent to the allegations herein, and is currently a member of the State Bar of California.

Probation Violations

On May 22, 2007, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case no. 05-O-04608 recommending discipline consisting of stayed suspension for one year and until respondent made restitution to Michael and Holly Jurgensen in the amount of \$3,000 plus 10% interest per annum from December 18, 2003, and two years' probation on conditions including restitution to the Jurgensens, among other things. A copy of the stipulation and the State Bar Court's order approving same were properly served upon respondent on that same date at his State Bar membership records address by first-class mail, postage prepaid.

On September 11, 2007, the California Supreme Court filed an order, S154373, accepting the State Bar Court's discipline recommendation and ordering respondent to comply with the conditions of probation recommended, including the following, which respondent violated:

- (a) Within 30 days of the effective date of discipline, contacting the OP to schedule a meeting to discuss the terms and conditions of probation. Respondent did not do so. Instead, the OP contacted him on June 11, 2008, and conducted the meeting telephonically on June 12, 2008;
- (b) During the period of probation, submitting a written report to the OP on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect stating under penalty of perjury that he has complied with all provisions of the State Bar

Act and Rules of Professional Conduct during said period (quarterly report). Respondent has not submitted the quarterly reports due on the 10th of January, April, July and October 2008;

(c) Within 60 days of the effective date of discipline, develop a law office management/organization plan and submit it to the OP for approval. Respondent has not done so;

(d) Within 30 days of the effective date of discipline, join the State Bar's Law Office Management and Technology section and pay the dues and costs of enrollment for two years. Respondent was to provide proof of his enrollment with his first quarterly report. He has not done so; and

(e) Making restitution to Michael and Holly Jurgensen or to the Client Security Fund, if applicable, in the total amount of \$3,000 plus 10% interest per annum from December 18, 2003, payable in quarterly installments of \$500. Respondent was to provide proof of payment with each quarterly report. Respondent has not provided proof of any payments. In fact, on March 28, 2008, the OP learned from Jurgensen that respondent had not made any payments.

The Supreme Court order became effective on October 11, 2007, thirty days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent.³

On November 20, 2007, the OP wrote a letter to respondent, properly sent to him at his official address, reminding him of certain terms and conditions of his suspension and probation imposed pursuant to the Supreme Court's order and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, instruction sheets or forms to use in submitting quarterly reports and proof of restitution, as well as scheduling and enrollment information for Ethics School.

³Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his or her duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

On March 12, 2008, the OP sent respondent a letter to his official address indicating that it had not received his first quarterly report, the law office management plan, proof of restitution or proof of enrollment in the State Bar's Law Practice Management and Technology section. It also noted that he had not contacted the OP to discuss the terms and conditions of his probation.

The OP sent respondent a copy of the November 20, 2007 and the March 12, 2008 letters via facsimile on June 12, 2008. He received both the mailed and faxed copies of the letters.

Respondent did not comply with the conditions of probation as set forth above.

CONCLUSIONS OF LAW

Pursuant to section 6093, subdivisions (b) and (c) and rule 561, the court concludes that OP has demonstrated by a preponderance of the evidence that respondent wilfully violated the conditions of probation regarding contact with the OP, quarterly reports, providing proof of restitution, developing and submitting a law office management plan and providing proof of membership in the State Bar's Law Office Management and Technology section as ordered by the Supreme Court in S154373, more fully set forth above.

AGGRAVATING CIRCUMSTANCES

In aggravation, respondent has one prior record of discipline. (Std. 1.2(b)(i).) In S154373, respondent and the State Bar stipulated to culpability in one client matter of violations of rule 3-110(A) of the Rules of Professional Conduct and sections 6068, subdivision (i) There were no aggravating factors. The mitigating factor was no prior discipline.

Respondent engaged in multiple acts of misconduct. (Std. 1.2(b)(ii).)

Respondent significantly harmed the administration of justice as his failure to comply with the conditions of his probation made it more much difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

Further, respondent's failure to comply with the probation conditions after being reminded by OP demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

MITIGATING CIRCUMSTANCES

It is respondent's burden to establish mitigating factors, but he did not participate in this proceeding. Accordingly, no mitigating factors are found.

DISCUSSION

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, but any actual suspension cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rule 562.) 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* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The court agrees with the OP's request that respondent be actually suspended for the full amount of stayed suspension, one year and until respondent made restitution. Respondent was aware of the terms and conditions of his disciplinary probation, yet failed to comply with them despite reminders from OP.

The prior disciplinary order "provided [respondent] an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in [the matter] presently under consideration sadly indicates either his unwillingness or inability to do so." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) Accordingly, after considering the misconduct and the aggravating and mitigating circumstances, the court recommends, among other things, one year of actual suspension and until he makes restitution to the Jurgensens and additional probation, during which time he will have the opportunity of demonstrating that he is desirous and able to meet these important ethical obligations in the timely and serious fashion expected of California attorneys. The court expects no less from respondent.

DISCIPLINE RECOMMENDATION

The court recommends that the probation of respondent **Paul John Majors**, previously ordered in Supreme Court case matter S154373 (State Bar Court case no. 05-O-04608), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent be

suspended for two years and until he makes restitution to Michael and Holly Jurgensen in the amount of \$3,000 plus 10% interest per annum from December 18, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Michael and Holly Jurgensen, plus interest and costs, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof thereof to the State Bar's Office of Probation in Los Angeles, California; and until he complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, that execution of such suspension be stayed; and that he be placed on probation for three years on the following conditions:

1. Respondent shall be actually suspended from the practice of law for the first year of probation and until he makes restitution to Michael and Holly Jurgensen in the amount of \$3,000 plus 10% interest per annum from December 18, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Michael and Holly Jurgensen, plus interest and costs, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof thereof to the State Bar's Office of Probation in Los Angeles, California.

If respondent is actually suspended for two years or more, he shall remain actually suspended until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct;

2. During the period of probation, respondent shall comply with the State Bar Act and the Rules of Professional Conduct;

3. Within ten (10) days of any change, respondent shall report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the State Bar Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

4. Respondent shall submit written quarterly reports to the State Bar Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the

Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report shall be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

5. Subject to the assertion of applicable privileges, respondent shall answer fully, promptly, and truthfully, any inquiries of the State Bar Office of Probation which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;

6. The period of probation shall commence on the effective date of the order of the Supreme Court imposing discipline in this matter.

7. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years and until he makes restitution as specified above and complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, shall be satisfied and that suspension shall be terminated.

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.⁴

It is not recommended that respondent be ordered to successfully complete State Bar Ethics School or to take and pass the Multistate Professional Responsibility Examination as he was ordered to do so in Supreme Court matter S154373 (State Bar Court case no. 05-O-04608).

⁴Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

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.

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that respondent be actually suspended due to said violations.

IT IS THEREFORE ORDERED that respondent **PAUL JOHN MAJORS**, be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order.

IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by Business and Professions Code section 6007, subdivision (d)(2).

IT IS RECOMMENDED that respondent's actual suspension in this matter commence as of the date of his inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: December 19, 2008

RICHARD A. PLATEL
Judge of the State Bar Court