

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 09-O-14335-PEM
)	(10-O-03860; 10-O-03861)
RICHARD HAMM)	DECISION
)	
Member No. 61401)	
)	
A Member of the State Bar.)	

I. Introduction

In this contested hearing, respondent Richard Hamm is charged with violating the conditions of probation imposed by the California Supreme Court in its November 14, 2008 order in Supreme Court order no. S1666737 (State Bar Court case nos. 00-C-15145; 02-O-14459) and in its June 10, 2009 order in Supreme Court order no. S172309 (State Bar Court case no. 07-C-13275). Furthermore, respondent is charged with not complying with laws, practicing law while suspended, making misrepresentations to the Office of Probation, issuing client trust account checks against insufficient funds and commingling personal funds in a client trust account.

For the reasons stated below, the court finds by clear and convincing evidence that respondent did not fully comply with the terms of his disciplinary probation in the above-referenced cases as well as other misconduct. In light of the serious nature and extent of respondent's misconduct and the aggravating circumstances and the lack of compelling

mitigation, the court recommends that respondent be disbarred from the practice of law in California.

II. Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on May 20, 2010. On May 27, 2010, the State Bar filed an amended NDC.

On June 15, 2010, respondent filed an answer to the amended NDC.

A Second Amended NDC was filed on November 19, 2010 after a motion was granted to do so.

On January 12, 2011, the parties filed a stipulation as to undisputed facts and authenticity of the State Bar's proposed exhibits, which the court approves.

Trial was held on January 19 and 20, 2010. The State Bar was represented by Deputy Trial Counsel Sherrie McLetchie. Respondent represented himself.

On January 25, 2010, following closing briefs, the court took this matter under submission.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the evidence, testimony, and stipulations introduced at this proceeding.

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 18, 1974, and has been a member of the State Bar of California since that time.

B. Findings of Fact

Probation Violations - Supreme Court Order No. S166637 [00-C-15145; 02-O-14459]

On November 14, 2008, the California Supreme Court filed order no. S166637 (State Bar Court case nos. 00-C-15145; 02-O-14459) suspending respondent from the practice of law for two years, and until he showed rehabilitation, fitness to practice and learning and ability in the general law pursuant to Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct¹, standard 1.2(c)(ii); staying imposition of the suspension; and placing him on probation for a period of five years on conditions including 30 days of actual suspension, among other things. The conditions of probation were contained in a stipulation the parties executed.² The Supreme Court order became effective December 14, 2008 and remained in full force and effect at all times thereafter. Respondent had notice of and was aware of the Supreme Court order.

On December 1, 2008, the State Bar mailed its 2009 membership fee statement which set forth disciplinary costs that respondent owed pursuant to the November 14, 2008 Supreme Court order. Respondent received the fee statement shortly after December 1, 2008.

On December 15, 2008, the State Bar mailed respondent a letter enclosing a copy of the 2009 fee statement and notifying him that payment of disciplinary costs was a condition of his return to active status, and, that, pursuant to Business and Professions Code section 6140.7, he

¹ Future references to standard or std. are to this source.

² Respondent signed this stipulation and agreed to its terms and conditions in order to enter in the Court's Alternative Discipline Program (ADP), which is a program for respondents with substance abuse or mental health issues. Respondent was admitted into the ADP program because he had a severe problem with alcohol. By order filed April 9, 2008, the court terminated respondent from the program based upon his noncompliance with the conditions of ADP and his arrest for driving with a blood alcohol level of 0.08% or more, to which he pled guilty.

would remain actually suspended from the practice of law until the disciplinary costs were paid. Respondent received the December 15, 2008 letter shortly thereafter.

By January 13, 2009, respondent had not paid all of his disciplinary costs, and consequently, his suspension continued. On January 15, 2009, respondent filed in the Hearing Department a motion for relief from or extension of time to pay disciplinary costs. On January 23, 2009, as counsel for the plaintiff, but while he was still actually suspended from the practice of law, respondent signed a stipulation to continue arbitration in the matter entitled *Seng Choy Saechao v. Keith J. Nokes*, Alameda County Superior Court case no. RG08-3637190 (Nokes matter), to continue an arbitration scheduled for January 29, 2009, for up to 60 days and caused the stipulation to be faxed to counsel for defendant Keith Nokes. The stipulation was subsequently filed on January 27, 2009.

On Tuesday, February 3, 2009, respondent appeared in person as counsel for plaintiff at a case management conference in the Nokes matter.

On February 23, 2009, the Hearing Department ordered that, among other things, respondent could pay one-fifth of costs then-owing in Supreme Court order no. S166637 with his State Bar membership fees for the years 2010, 2011, 2012, 2013 and 2014. The February 23, 2009 order had no retroactive effect. Effective February 23, 2009, respondent was restored to active status.

Respondent thought he could practice law despite not paying all of his disciplinary costs nor receiving an order from the Hearing Department regarding his costs and restoring him to active status. His belief was based on *Friday v. State Bar* (1943) 23 Cal.2d 501 and *In the Matter of Langfus* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161.

On February 5, 2009, the Office of Probation mailed a letter to respondent at his membership records address which, among other things, summarized his obligations pursuant to

the November 14, 2008 Supreme Court order and asked him to execute and return an Authorization to Obtain and Disclose Medical Information form. The February 5, 2009 letter enclosed, among other things, a copy of the November 14, 2008 Supreme Court order, the conditions of respondent's probation which were part of the June 27, 2008 Hearing Department Decision, and an Authorization to Obtain and Disclose Medical Information form.

Probation condition number 8 required that:

Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory such blood and/or urine samples as may be required to show that respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at respondent's expense, a screening report on or before the 10th day of each month of the probation period, containing an analysis of respondent's blood and/or urine obtained no more than 10 days earlier.

On March 9, 2009, respondent transmitted by facsimile an executed Authorization to Obtain and Disclose Medical Information form to the Office of Probation. However, respondent did not cause a laboratory to provide a screening report to the Office of Probation by the tenth of February, March, April, June, July, August, September, October and December 2009 and the tenth of January and March 2010.

Respondent testified at trial that, although he had been terminated from ADP, he was in the Lawyer's Assistance Program (LAP) where he was randomly tested for the presence of alcohol. He believed that Carolyn Conner, his LAP case manager, was forwarding the results of his laboratory tests to the Office of Probation. Carolyn Conner testified that respondent was tested randomly for alcohol on a monthly basis and that LAP does generate reports to the court and the Office of Probation.

Exhibit 22 indicates that the only missing screening reports are those for June and November 2009 but that all of the other reports are late except the one due in Feb 2010. The

court believes that respondent did believe that LAP was forwarding reports to the Office of Probation and, indeed, they were, but the reports were not timely submitted by LAP.

Respondent had also worked out with LAP for testing to take place before the tenth of the month so that he did not have to do testing twice as it did cost money. However, ultimately it was his responsibility to see that the results of his testing got to the Office of Probation before the tenth of the month.

Probation condition number 4 required that:

Respondent must submit written quarterly reports to the Office of Probation no later than each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and the conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing all the same information required by the quarterly reports. The final report must be submitted no earlier than 20 days before the last day of the probation period and no later than the last day of such period.

Thus, respondent's first quarterly report was due by April 10, 2009. Only the October 10, 2009, was filed on time. The April 10, 2009 report was filed on May 14, 2009 (34 days late); the July 10, 2009 report was filed August 19, 2009 (40 days late); and the January 10, 2010 report was filed on January 11, 2010 (1 day late).

Probation condition number 6 required that:

Respondent must abstain from use of any alcoholic beverages, and must not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.

The State Bar alleges that, on or about September 3, 2009, and December 19, 20, and 21, 2009, respondent used alcoholic beverages. The State Bar's belief is based on a September screening test that came back positive for alcohol. Respondent denies that on or about September 3, 2009, he used alcoholic beverages. At respondent's request, the court ordered a

retest of this screening test at respondent's expense. However, because the process took over a year, the sample was destroyed. Respondent admits that on December 19, 20 and 21, 2009 he used alcoholic beverages due to a stressful family situation.

At all relevant times herein, respondent maintained a client trust account at Bank of the West account number XXX-XXXX206 (CTA). On February 19, 2009, CTA check number 369 in the amount of \$616 was presented to Bank of the West for payment and returned to the payee due to insufficient funds in respondent's CTA.

On June 4, 2009, respondent issued CTA check 443 in the amount of \$1190 payable to Santa Clara Leasing for payment of his June 2009 office rent. On June 15, 2009, respondent issued CTA check 444 in the amount of \$173 payable to Diamond Mine Mini-Storage for payment of storage and a CTA check 446 in the amount of \$220 payable to Kim Haverson for payment of LAP program fees. Both of these June 15 checks were for personal or business expenses.

On July 8, 2009, CTA check number 448 in the amount of \$78 was presented to the Bank of the West for payment and returned to the payee due to insufficient funds in respondent's CTA. On July 13, 2009, respondent issued an "electronic check" to cover returned CTA check 448. The "electronic check" was also issued against insufficient funds and respondent was charged an overdraft fee by Bank of the West.

Probation Violations as to Supreme Court Order S172309 [07-C-13275]

On June 10, 2009, the California Supreme Court filed an order in case number S172309 (State Bar Court case no. 07-C-13275) suspending respondent from the practice of law for two years, execution stayed, and placing him on probation for two years on conditions including actual suspension for six months and until he complied with standard 1.4(c)(ii). The Supreme Court properly served its June 10, 2009 order on respondent. Shortly thereafter, respondent

received it and was aware of it. It became effective on July 10, 2009. Respondent remains suspended to date.

On August 3, 2009, the Office of Probation mailed a letter to respondent at his membership records address which, among other things, summarized his obligations pursuant to the June 10, 2009 Supreme Court order. Enclosed with the letter were, among other things, a copy of the June 10, 2009 Supreme Court order; the conditions of probation to which respondent agreed; and a quarterly reporting form for case number S172309. Respondent received this letter shortly thereafter.

Probation condition number 4 requires that:

Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

Thus, respondent was required to contact the Office of Probation no later than August 9, 2009, to schedule a meeting with the assigned probation deputy to discuss the terms of his probation.

The State Bar alleges respondent did not contact the Office of Probation by August 9, 2009, to schedule a meeting with the assigned probation deputy. Respondent testified that he contacted the State Bar on August 4 and 6, 2009. The State Bar agrees that respondent had been in contact with the Office of Probation on numerous occasions prior to August 9, 2009, however, that during the contact respondent never formally requested to schedule a meeting with the probation deputy regarding S172309. The court agrees with respondent that his contacts on August 6 and 9 were sufficient to cover both cases.

Probation condition "Substance Abuse Condition c." requires that:

Respondent must select a license [sic] medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.

Respondent did not cause a laboratory to provide screening reports to the Office of Probation due on the tenth of August through December, 2009, and January and March, 2010. Respondent testified that he thought LAP was sending his screening tests to the Office of Probation in a timely manner and, when he found out they were not doing so, he started doing it himself. Respondent should have taken action sooner since it was ultimately his responsibility to see that the Office of Probation received the screening tests in a timely manner.

Probation condition "Substance Abuse Condition a." requires that:

Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.

The State Bar alleges that respondent on or about September 3, 2009, and December 19, 20, and 21, 2009, respondent used alcoholic beverages. Respondent denies that he used alcoholic beverages on September 3, 2009. However, he admits that he did use alcoholic beverages on December 19, 20, and 21, 2009. As previously noted, a retest of the September 3 sample was ordered and not done as the sample had been destroyed.

Probation condition number 5 requires that:

Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, Respondent must 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. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due not earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

Respondent did not submit his October 10, 2009 and January 10, 2010 in a timely manner. He was at least a day late in faxing his January 10, 2010 quarterly report.

C. Conclusions of Law

Count 1: Failure to Comply with Conditions of Probation (Bus. & Prof. Code, §6068(k))³

Respondent is charged with violating Business and Professions Code section 6068, subdivision (k), which provides that it is the duty of a member of the State Bar to comply with all conditions attached to any disciplinary probation.

There is clear and convincing evidence that respondent violated the terms of his disciplinary probation in Supreme Court order no. S166637 by: (1) not timely providing screening reports to the Office of Probation on the tenth of every month from January through December 2009 and January and March 2010; (2) not providing timely a quarterly report to the Office of Probation on April 10, 2009; and (3) not abstaining from alcohol on December 19, 20 and 21, 2009 in willful violation of section 6068, subdivision (k).

Count 2: Failure to Comply with Laws (Bus. & Prof. Code, §6068(a))

There is clear and convincing evidence that respondent willfully violated section 6068, subdivision (a), which requires that attorneys obey the laws of this state and of the United States, by engaging in the unauthorized practice of law in violation of sections 6125 and 6126. He

³ References to section are to the Business and Professions Code, unless otherwise indicated.

appeared in person at a case management conference on February 3, 2009, in the Nokes matter when he knew he was suspended from the practice of law.

Count 3: Practicing Law While Suspended -- Moral Turpitude (§6106)

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.

The record clearly establishes that, although respondent knew he was suspended from the practice of law, he appeared at the February 3, 2009 case management conference in the Nokes matter.

Respondent argued that he researched the issue of whether he could practice while he had not paid disciplinary costs. However, he relied on old authority and did not shepardize his research. Also, he relied on the advice of a disbarred lawyer. Accordingly, the research he did was so deficient that his reliance upon it constituted gross negligence amounting to moral turpitude.

Count 4: Misrepresentation to Office of Probation -- Moral Turpitude (§6106)

There is clear and convincing evidence that respondent willfully violated section 6106 by declaring under penalty of perjury in reports to the Office of Probation dated April 27 and May 14, 2009, that he had complied with the State Bar Act when, in fact, he had violated it by engaging in the unauthorized practice of law on February 3, 2009 in the Nokes case.

Count 5: Issuing CTA Check Against Insufficient Funds -- Moral Turpitude (§ 6106)

There is not clear and convincing evidence that respondent committed acts involving moral turpitude by issuing three checks drawn on his trust account against insufficient funds.

“It is settled that the ‘continued practice of issuing [numerous] checks which [the attorney knows will] not be honored violates’” section 6106. (*Bowles v. State Bar* (1989) 48

Cal.3d 100, 109, italics added, quoting *Alkow v. State Bar* (1952) 38 Cal.2d 257, 264.) The record fails to establish, by clear and convincing evidence, that respondent engaged in a *continued* practice of issuing insufficiently-funded (NSF) checks. Moreover, respondent did not issue *numerous* NSF checks; he issued three. There is not clear and convincing evidence that respondent knew or should have known that the three checks were insufficiently funded when he issued them or that respondent was grossly negligent in issuing the three NSF checks.

Count 6: Trust Account Violations (Rule 4-100(A))

Rule 4-100(A) requires, in relevant part, that an attorney place all funds held for the benefit of clients, including advances for costs and expenses, in a client trust account. “An attorney violates [rule 4-100] when he or she fails to deposit and manage funds in the manner delineated by the rule, even if this failure does not harm the client. [Citation.]” (*Murray v. State Bar* (1985) 40 Cal.3d 575, 584.) Moreover, under rule 4-100(A), commingling occurs whenever an attorney uses his or her client trust account for personal purposes even if no client funds are in the account at the time. (*In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 876.)

The record clearly establishes that respondent willfully violated rule 4-100(A) by using his trust account for personal purposes on June 4 and 15, 2009.

Count 7: Failure to Comply with Conditions of Probation (Bus. & Prof. Code, §6068(k))

There is clear and convincing evidence that respondent willfully violated section 6068, subdivision (k)⁴ by: (1) not abstaining from alcohol on December 19, 20, and 21, 2009; (2) not providing timely screening reports to the Office of Probation by the tenth of August through

⁴If respondent’s quarterly reports were late, then his reports of compliance with criminal probation necessarily were late. However, no evidence was presented as to the terms of respondent’s criminal probation and the court cannot ascertain whether he had to comply with this condition.

December 2009 and January and March 2010; and (3) not providing timely the quarterly reports due on the tenth of October 2009 and January 2010 to the Office of Probation.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2.)⁵

A. Mitigation

Objective Steps Demonstrating Remorse (Std. 1.2(e)(vii))

Respondent believed that he did not need to contact the Office of Probation regarding S172309 because he was already in contact with it on a prior matter. Once respondent realized his mistake, he promptly scheduled a meeting and met with the Office of Probation.⁶

Lack of Harm (Std. 1.2(e)(iii))

Respondent's failure to timely schedule his initial probation meeting did not result in any harm to the Office of Probation or the State Bar.

Participation in the Lawyer Assistance Program

Respondent voluntarily enrolled in the State Bar's Lawyer Assistance Program (LAP) in 2004. Respondent currently continues to be an active participant in LAP. Respondent's continued efforts to address his alcoholism warrant some, but not much, consideration in mitigation.

⁵ All further references to standard(s) are to this source.

⁶ The court also considered whether to find in mitigation that respondent's actions were in good faith. To establish good faith as a mitigating circumstance, an attorney must prove that his beliefs were both honestly held and reasonable. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.) Here, the court finds that respondent honestly believed that his prior communications with the Office of Probation satisfied the requirements of his present probation. This belief was reasonable because respondent's prior communications with the Office of Probation basically involved the same conditions as the previous probation.

Cooperation with the State Bar (Std. 1.2(e)(v))

Respondent entered into a stipulation of facts with the State Bar.

B. Aggravation

Multiple Acts of Misconduct (Std. 1.2(b)(ii).)

Respondent's misconduct evidences multiple acts of wrongdoing.

Prior Record of Discipline (Std. 1.2(b)(i).)

Respondent's prior record of discipline is an aggravating circumstance. Respondent has been previously disciplined on three separate occasions.

In Supreme Court order no. S088578 (State Bar Court case nos. 97-O-13161; 97-O-13691 (Cons.)), effective September 7, 2000, respondent was disciplined in two consolidated matters for not adequately supervising his non-lawyer staff resulting in the failure to perform legal services with competence and, in one of the matters, for not maintaining client funds in trust. Respondent was ordered suspended for 120 days and until he made restitution and complied with standard 1.4(c)(ii), stayed, and was placed on probation for two years on conditions including completing \$4,000 restitution.

On November 14, 2008, the California Supreme Court issued order no. S166637 (State Bar Court case nos. 00-C-15145; 02-O-14459) imposing discipline consisting of stayed suspension for two years and until respondent complied with standard 1.4(c)(ii) and five years' probation on conditions, including 30 days' actual suspension, based on respondent's conviction for violating Vehicle Code section 23152(b).

On September June 10, 2009, the California Supreme Court issued order no. S172309 (State Bar Court case no. 07-C-13275), imposing discipline consisting of stayed suspension for two years and two years' probation on conditions, including actual suspension for six months

and until respondent complied with standard 1.4(c)(ii), based on respondent's conviction for violating Vehicle Code section 23152(b).

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve 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.) Disciplinary probation serves the critical function of protecting the public and rehabilitating the attorney. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

Respondent has been found culpable of violating numerous conditions in two prior disciplinary probations, among other things. The standards, however, provide a broad range of sanctions, ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 2.2(b), 2.3 and 2.6.)

Due to respondent's three prior records of discipline, the court also looks to standard 1.7(b) for guidance. Standard 1.7(b) provides that when an attorney has two prior records of discipline, "the degree of discipline imposed in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

The standards, however, are guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards. [Citation.]" (*Id.* at p. 251.) While the standards are not binding, they are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.)

The State Bar urges that respondent be disbarred pursuant to standard 1.7(b). The court agrees.

This is respondent's fourth disciplinary matter. It involves, in large part, noncompliance with probation conditions imposed in two prior disciplinary matters⁷ as well as a trust accounting violation for using entrusted funds to pay for personal expenses. He also engaged in the unauthorized practice of law and made misrepresentations to the Office of Probation. The mitigating factors are by no means compelling. It appears that respondent does not take his ethical duties seriously although he has been given ample opportunity to demonstrate otherwise. The court cannot take another chance on respondent at this time. There is no compelling reason to deviate from standard 1.7(b). Disbarment is the only means of protecting the public from additional misconduct and the court so recommends.

VI. Recommended Discipline

Disbarment

IT IS HEREBY RECOMMENDED that respondent **Richard Hamm** be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

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

⁷ The court notes that many of the probation violations relate to respondent's alcoholism, which was the basis of two of his prior disciplinary matters. "[T]he greatest amount of discipline is warranted for violations of probation which show a breach of a condition of probation significantly related to the misconduct for which probation was given, especially in circumstances raising a serious concern about the need for public protection. [Citation.]" (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.)

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. It is further recommended that **Richard Hamm** be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment be enforceable as provided for under Business and Professions Code section 6140.5.

Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: April ____, 2011

PAT McELROY
Judge of the State Bar Court