

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of ) Case No. **10-O-02692-RAP**  
)  
**DAVID PAUL SCHWARTZ,** )  
) **Decision**  
)  
**Member No. 45914,** )  
)  
A Member of the State Bar. )

**I. Introduction**

In this default disciplinary matter, respondent **David Paul Schwartz** is found culpable, by clear and convincing evidence, of violating his probation conditions as ordered by the California Supreme Court.

In view of respondent's misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law for 18 months, that execution of suspension be stayed, and that he be actually suspended from the practice of law for one year and until the State Bar Court grants a motion to terminate respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

**II. Pertinent Procedural History**

On April 8, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) properly served on respondent a Notice of Disciplinary Charges (NDC) at his official

membership records address. Respondent received the NDC but did not file a response. (Rules Proc. of State Bar, rule 103.)

On the State Bar's motion, respondent's default was entered on July 26, 2010, and respondent was enrolled as an inactive member on July 29, 2010, under Business and Professions Code section 6007, subdivision (e).<sup>1</sup> An order of entry of default was sent to respondent's official address by certified mail.

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on August 17, 2010, following the filing of the State Bar's brief on culpability and discipline.

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on January 15, 1970, and has been a member of the State Bar of California at all times since that date.

#### **Supreme Court Case No. S172490**

On June 23, 2009, the California Supreme Court ordered respondent suspended from the practice of law for one year, that execution of the suspension be stayed, and that he be placed on probation for one year subject to the conditions of probation, including an actual suspension for 30 days, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation (Supreme Court case No. S172490; State Bar Court case No. 07-O-13688). The order became effective July 23, 2009, and was duly served on respondent. Respondent

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<sup>1</sup>All references to section (§) are to the provisions of the Business and Professions Code, unless otherwise indicated.

received a copy of the order.

Among other probation conditions, respondent was required 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. Within 30 days after the effective date of discipline, respondent is to send a letter by certified mail, return receipt requested, to Annette Laurie, offering to initiate fee arbitration, pay any costs and fees associated with the fee arbitration, and participate in binding fee arbitration with Laurie, upon her request, regarding fees respondent received for representation of Laurie; and
3. Within 14 days of any request by Laurie to participate in fee arbitration, respondent is to initiate the arbitration, including making payment required by the organization conducting the fee arbitration.

Respondent did not file the quarterly report due January 10, 2010.

On August 27, 2009, respondent sent a letter to Laurie, offering, upon Laurie's request, to initiate binding fee arbitration, pay any costs and fees associated with the arbitration and to participate in binding fee arbitration with Laurie.

On August 31, 2009, Laurie sent respondent a letter in response to his August 27 letter, advising him that she accepted his offer to initiate binding fee arbitration and requested that respondent immediately initiate the binding arbitration proceedings. Respondent received her letter. However, respondent did not initiate any fee arbitration proceedings.

***Count 1: Failure to Comply With Probation Conditions (Bus. & Prof. Code, § 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 as ordered by the Supreme Court in S172490, in willful violation of section 6068, subdivision (k): (1) by failing to file the January 10, 2010 quarterly report; and (2) by failing to initiate mandatory fee arbitration within 14 days of Laurie's request for such arbitration.

**IV. Mitigating and Aggravating Circumstances**

**A. Mitigation**

No mitigating evidence was offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>2</sup>

**B. Aggravation**

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

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) In the underlying matter, respondent stipulated to a 30-day actual suspension, one-year stayed suspension and one-year probation for his misconduct in one client matter, involving failure to properly withdraw from employment, failure to communicate with a client, failure to return client papers and failure to cooperate with the State Bar.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) He violated two probation conditions – failure to file a quarterly report and failure to initiate fee arbitration.

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<sup>2</sup>All further references to standards are to this source.

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 NDC in the instant proceeding was filed. (Std. 1.2(b)(v).) He has yet to initiate fee arbitration or file the January 2010 quarterly report.

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).) Although respondent communicated with deputy trial counsel Elina Kreditor on two occasions and was well aware of the NDC, respondent told her that he did not wish to participate in the proceedings. Their last communication was on June 15, 2010.

## **V. Discussion**

Public protection and attorney rehabilitation are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.) Respondent's prior misconduct and his present probation violations involve inattention to his professional duties and a continued unwillingness or inability to conform to the standards required of attorneys licensed in this state. Absent compelling mitigating circumstances, an attorney who willfully violates a significant condition of probation can anticipate actual suspension as the expected result. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 574.)

The State Bar urges that respondent be actually suspended for one year. The court agrees.

In view of respondent's misconduct, the case law and the aggravating evidence, placing respondent on an actual suspension for a minimum of one year would be appropriate to protect the public and to preserve public confidence in the profession. (See *In the Matter of Howard*, *supra*, 2 Cal. State Bar Ct. Rptr. 445 [one year's actual suspension for probation violations ].)

## **VI. Recommendations**

### **A. Discipline**

Accordingly, the court hereby recommends that respondent **David Paul Schwartz** be suspended from the practice of law in California for 18 months, that said suspension be stayed, and that respondent be actually suspended from the practice of law for a minimum of one year. He is to remain suspended until he files and the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)

It is further recommended that if he is actually suspended for more than two years, he will remain actually suspended until he has shown proof satisfactory to 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).

It is recommended that respondent be ordered to comply with any probation conditions imposed by the State Bar Court as a condition for terminating his suspension. (Rules Proc. of State Bar, rule 205(g).)

### **B. Multistate Professional Responsibility Exam**

Because he was previously ordered to take and pass the Multistate Professional Responsibility Examination in the underlying matter, S172490, it is not recommended that respondent be ordered to do so in this matter. (Cal. Rules of Court, rule 9.10(b).)

### **C. California Rules of Court, Rule 9.20**

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 revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.<sup>3</sup>

**D. Costs**

It is further 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.

Dated: November 5, 2010.

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RICHARD A. PLATEL  
Judge of the State Bar Court

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<sup>3</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)