

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>10-PM-10837-LMA</b>
	)	
<b>HARRY TOM MILLER</b>	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE PROBATION AND FOR</b>
<b>Member No. 104709</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

The Office of Probation (OP), represented by Terrie Goldade, filed a motion pursuant to Business and Professions Code sections 6093, subdivision (b) and 6093, subdivision (c)<sup>1</sup> and rules 5310 et seq. of the Rules Proc. of State Bar<sup>2</sup> to revoke the probation of respondent Harry Tom Miller. 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

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<sup>1</sup>Future references to section are to this source.

<sup>2</sup>Future references to rule are to this source.

lifted and that he be actually suspended from the practice of law for one year, among other things.

## **FINDINGS OF FACT**

### **Jurisdiction**

Respondent was admitted to the practice of law in California on December 3, 1982, and has been a member of the State Bar at all times since.

### **Probation Violations**

On July 24, 2007, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case no. 06-O-13040 recommending discipline consisting of one year's stayed suspension and three years' probation on conditions, including 30 days' actual suspension, among other things. A copy of the stipulation and the State Bar Court's order approving same were properly served upon respondent's counsel on that same date.

On November 30, 2007, the California Supreme Court filed an order, S156543, accepting the State Bar Court's discipline recommendation and ordering respondent to comply with the conditions of probation recommended, including the following, with which respondent did not comply:

(a) Within 30 days of the effective date of discipline, that is, by January 29, 2008, contacting the OP to schedule a meeting to discuss the terms and conditions of probation.

Respondent did not do so until February 21, 2008; and

(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). Along with each quarterly report, respondent was to submit a report from his practice supervisor. Respondent has not submitted the quarterly reports or the supervisor reports due on the 10<sup>th</sup> of July and October 2009 and January, April, July and October 2010. Moreover, the quarterly and supervisor reports due on the 10<sup>th</sup> of July and October 2008 and January and April 2009 were untimely filed on July 31, 2008 and January 12 and July 6, 2009, respectively.

The Supreme Court order became effective on December 30, 2007, thirty days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent.<sup>3</sup>

On December 27, 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, as well as scheduling and enrollment information for Ethics School.

On June 25 and December 21, 2009, the OP sent respondent letters to his official address indicating that it had not received reports due in April, July and October 2009. Also, on July 23, 2009, the OP called respondent regarding the July 2009 report.

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 5.311, 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 and supervisor reports as ordered by the Supreme Court in S156543, more fully set forth above.

#### **AGGRAVATING CIRCUMSTANCES**

In aggravation, respondent has one prior record of discipline. (Std. 1.2(b)(i).) In S156543, respondent and the State Bar stipulated to culpability in one client matter of violations of section 6068(c) and rule 1-300(A) of the Rules of Professional Conduct. Client harm was found as aggravation. Family problems and no prior discipline were mitigating factors.

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<sup>3</sup>Although 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.

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 5.312.) 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. 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 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 Harry Tom Miller, previously ordered in Supreme Court case matter S156543 (State Bar Court case no. 06-O-13040), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent be actually suspended for one year.

Within one year of the effective date of the discipline herein, respondent must provide to the State Bar Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar.)

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.<sup>4</sup>

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination as he was ordered to do so in Supreme Court matter S156543 (State Bar Court case no. 06-O-13040).

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<sup>4</sup>Respondent 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 Harry Tom Miller, 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: March \_\_\_\_\_, 2011

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LUCY ARMENDARIZ  
Judge of the State Bar Court