

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No.: <b>12-PM-11410-RAH (S195642)</b>
	)	
<b>ALEXANDER JOHN PECCEL,</b>	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE PROBATION AND FOR</b>
<b>Member No. 167229,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**Introduction**<sup>1</sup>

In this probation revocation proceeding, respondent **Alexander John Pecel** is charged with violating his probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (Office of Probation) seeks to revoke his probation, to impose upon respondent the entire period of suspension previously stayed, and to involuntarily enroll respondent as an inactive member of the State Bar.

The court finds, by preponderance of the evidence, that respondent has violated his probation conditions and hereby grants the motion. Therefore, the court orders that respondent be involuntarily enrolled as an inactive member of the State Bar. The court also recommends, among other things, that respondent's probation be revoked, that the previously stayed, two-year suspension be lifted, and that he be actually suspended for two years and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std 1.4(c)(ii).)

### **Significant Procedural History**

On February 28, 2012, the Office of Probation filed and properly served a motion to revoke probation on respondent. The motion was mailed to respondent's official membership records address. Respondent did not file a response within 20 days of the service of the motion.

After granting the Office of Probation's request to take judicial notice of certified copies of respondent's three prior records of discipline, the court takes this matter under submission on April 2, 2012.

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

Respondent was admitted to the practice of law in California on December 13, 1993, and has been a member of the State Bar of California at all times since that date.

#### **Facts**

On October 19, 2011, in Supreme Court case No. S195642, the California Supreme Court ordered, among other things, that:

1. Respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for three years, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed June 23, 2011 (State Bar Court case Nos. 08-O-11025 and 08-O-14151); and
2. Respondent comply, among other things, with the following probation conditions:
  - A. Within 30 days from the effective date of discipline (by December 18, 2011), he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the probation conditions; and

B. During the period of probation, respondent was required to submit a written report to the Office of Probation 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 provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report).

The Supreme Court order became effective on November 18, 2011, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.<sup>2</sup>

On November 7, 2011, and January 23, 2012, the Office of Probation wrote a letter to respondent, properly sent to him at his official address, reminding him of certain terms and conditions of his suspension and the 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, and instruction sheets or forms to use in submitting quarterly reports.

The letters were not returned as undeliverable.

Respondent has not called the Office of Probation to schedule his meeting and has not conducted the meeting. Also, he has failed to file his first quarterly report due January 10, 2012.

On February 15, 2012, probation deputy Maricruz Farfan of the Office of Probation telephoned respondent at his membership records telephone number. She left a message for respondent with someone named Mary Ann, who answered the phone. However, as of February 28, 2012, the Office of Probation has not received any contact or motion from respondent.

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<sup>2</sup>Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, California Rules of Court, rule 8.532(a) requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. 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 duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

## **Conclusions**

Section 6093, subdivision (b), provides that violation of a probation condition constitutes cause for revocation of any probation then pending and may constitute cause for discipline.

Section 6093, subdivision (c), provides that the standard of proof is the preponderance of the evidence. Bad faith is not a requirement for a finding of culpability in a probation violation matter. Instead, a general purpose or willingness to commit an act or permit an omission is sufficient. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

Respondent did not comply with the conditions of probation, as ordered by the Supreme Court in S195642: (1) respondent has not called the Office of Probation to schedule his meeting and has not conducted the meeting; and (2) respondent has failed to file his first quarterly report due January 10, 2012.

As a result, the revocation of respondent's probation in California Supreme Court order No. S195642 is warranted.

## **Aggravation<sup>3</sup>**

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

Respondent has three prior records of discipline.

In his first prior record of discipline, respondent stipulated to culpability in one client matter for failing to communicate with his client in 2000-2001. He was privately reproved. (State Bar Court case No. 02-O-10197, effective March 25, 2003.)

In his second prior record of discipline, respondent stipulated to culpability in two client matters for failing to perform services in 2001-2004 and was ordered suspended for six months,

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<sup>3</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

stayed, and placed on probation for three years. (Supreme Court case No. S136098, effective November 17, 2005; State Bar Court case Nos. 04-O-10905 et al.)

In his third prior record of discipline, the underlying matter, respondent again stipulated to culpability in one client matter in 2007 for failing to perform services, failing to communicate with his client, and failing to return client file. He was ordered suspended for two years, stayed, and placed on probation for three years. (Supreme Court case No. S195642, effective November 18, 2011; State Bar Court case Nos. 08-O-11025 et al.)

**Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)**

Respondent committed multiple acts of wrongdoing, including failing to contact the Office of Probation and failing to file his quarterly report.

**Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)**

An attorney's continued failure to comply with his probation conditions after being notified of that noncompliance is properly considered a substantial aggravating circumstance. It demonstrates indifference toward rectification of or atonement for the consequences of one's misconduct. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) Although the motion to revoke his probation was filed in February 2012, which put respondent on notice that his probation status was in jeopardy, respondent still failed to contact the Office of Probation and file the quarterly report.

**Lack of Candor/Cooperation to Victims/State Bar (Std. 1.2(b)(vi).)**

Respondent's failure to participate in this proceeding is also an aggravating factor.

**Mitigation**

Since respondent did not file a response to the probation revocation motion, no evidence in mitigation was presented and none is apparent from the record. (Std. 1.2(e).)

### 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. (Rules Proc. of State Bar, 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.)

Although respondent had participated in his past three disciplinary matters, the court has no information about the underlying cause of his probation violations or of any mitigating circumstances surrounding his misconduct absent his participation in this proceeding.

The Office of Probation requested that respondent be actually suspended for the full amount of stayed suspension. The court agrees.

### Recommendations

The court recommends that the probation of respondent **Alexander John Pecel**, member No. 167229, imposed in Supreme Court case matter S195642 (State Bar Court case Nos. 08-O-11025 and 08-O-14151) be revoked; that the previous stay of execution of the suspension be lifted; and that respondent be actually suspended from the practice of law for two years and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std 1.4(c)(ii).)

### **Multistate Professional Responsibility Examination**

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was previously ordered to do so in Supreme Court case No. S195642.

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

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.<sup>4</sup>

### **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 of Involuntary Inactive Enrollment**

Section 6007, subdivision (d)(1), provides for an attorney's involuntary inactive enrollment for violating probation if: (A) the attorney is under a suspension order any portion of which has been stayed during a period of probation, (B) the court finds that probation has been violated, and (C) the court recommends that the attorney receive an actual suspension due to the probation violation or other disciplinary matter. The requirements of section 6007, subdivision (d)(1) have been met.

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<sup>4</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.)

Respondent is ordered to be involuntarily enrolled inactive under section 6007, subdivision (d)(1).<sup>5</sup> This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: May \_\_\_\_\_, 2012

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RICHARD A. HONN  
Judge of the State Bar Court

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<sup>5</sup>The court recommends that any period of involuntary inactive enrollment be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)