

PUBLIC MATTER

FILED

OCT 17 2005

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

In the Matter of )  
R. SCOTT DERVAES II, a.k.a. )  
R. SCOTT DERVAES, JR., )  
Member No. 202133, )  
A Member of the State Bar. )

Case No. 05-PM-03997-PEM

ORDER GRANTING MOTION TO  
REVOKE PROBATION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT

**I. INTRODUCTION**

Based upon alleged probation violations, the State Bar of California, Office of Probation ("State Bar") filed a motion to revoke the probation of respondent R. Scott Dervaes II, a.k.a. R. Scott Dervaes, Jr. ("respondent") imposed by the Supreme Court in its order filed on May 16, 2002, in Case No. S104922 (State Bar Court Case No. 00-O-13331; 00-O-14988; 00-O-14999 (Cons.)).

The State Bar requests that respondent's probation be revoked, and that respondent be actually suspended for three years, the entire period of suspension previously stayed by the Supreme Court, and until he satisfies the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.<sup>1</sup> The State Bar also requests that respondent be ordered to comply with rule 955 of the California Rules of Court ("rule 955"), and that respondent be involuntarily enrolled as an inactive member of the State Bar pursuant to Business

---

<sup>1</sup>All further references to standard(s) refer to the Standards for Attorney Sanctions for Professional Misconduct.



1 and Professions Code section 6007(d).<sup>2</sup>

2 For the reasons stated below, the State Bar's motion to revoke respondent's probation is  
3 hereby granted, as is its request to involuntarily enroll respondent to inactive status. The court  
4 therefore recommends that respondent be actually suspended from the practice of law for three  
5 years and until he satisfies the requirements of standard 1.4(c)(ii). The court shall also order  
6 respondent involuntarily enrolled as an inactive member of the State Bar pursuant to section  
7 6007(d).<sup>3</sup>

## 8 **II. PERTINENT PROCEDURAL HISTORY**

9 On August 25, 2005, the State Bar filed with the State Bar Court a motion to revoke  
10 respondent's probation, accompanied by the declaration of Lydia Dineros and Exhibits 1-3 in  
11 support of said motion. A copy of the motion, the declaration of Lydia Dineros, Exhibits 1-3 and  
12 a Probation Revocation Response form were properly served upon respondent on August 22,  
13 2005, by certified mail, return receipt requested, addressed to respondent at his latest address  
14 shown on the official membership records of the State Bar ("official address") pursuant to  
15 section 6002.1(c) and rule 60 and 563(a) of the Rules of Procedure of the State Bar of California  
16 ("Rules of Procedure").<sup>4</sup> There is no evidence as to whether the copy of the motion and  
17 supporting documents was returned to the State Bar by the U.S. Postal Service as undeliverable  
18 or for any other reason.

19 On September 1, 2005, a Notice of Assignment was filed and a copy was properly served  
20

---

21 <sup>2</sup>Unless otherwise indicated, all further references to section(s) refer to provisions of the  
22 California Business and Professions Code.

23 <sup>3</sup>For the reasons set forth *infra*, the court will not recommend that respondent be ordered  
24 to comply with rule 955.

25 <sup>4</sup>The certified copy of respondent's address history dated August 17, 2005, which is  
26 attached as part of Exhibit 1, is not competent evidence to establish that documents served after  
27 August 17, 2005, were properly served upon respondent. The court therefore takes judicial  
28 notice of the State Bar's official membership records pursuant to Evidence Code section 452,  
subdivision (h), which establishes that effective May 24, 2005, respondent's official address has  
been, and remains as of the date of this decision, Sixth Floor, 140 2<sup>nd</sup> Street, San Francisco, CA  
94105 3727.

1 upon respondent by first-class mail, postage fully prepaid, addressed to respondent at his official  
2 address. The copy of said notice served upon respondent was not returned to the State Bar Court  
3 by the U.S. Postal Service as undeliverable or for any other reason.

4 Respondent did not file a response to the State Bar's motion to revoke his probation, and  
5 the time for doing so expired.

6 After respondent failed to timely file a response as required by rule 563(b)(1), on  
7 September 19, 2005, the court issued a Submission Order taking this matter under submission for  
8 decision as of September 19, 2005. A copy of said order was properly served upon respondent  
9 by first-class mail, postage fully prepaid, addressed to respondent at his official address. The  
10 copy of said order served upon respondent was not returned to the State Bar Court by the U.S.  
11 Postal Service as undeliverable or for any other reason.

### 12 **III. FINDINGS OF FACT<sup>5</sup>**

#### 13 **Jurisdiction**

14 Respondent was admitted to the practice of law in the State of California on June 26,  
15 1999. Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of  
16 the official membership records pertaining to respondent which are maintained by the State Bar  
17 of California. These records reflect that respondent was a member of the State Bar of California  
18 at all times pertinent to the allegations herein and is currently a member of the State Bar of  
19 California.

#### 20 **Probation Violations**

21 By order dated May 16, 2002, the Supreme Court imposed discipline on respondent in  
22 Supreme Court Case No. S104922 (State Bar Court Case No. 00-O-13331; 00-O-14988; 00-O-  
23 14999 (Cons.)). The Supreme Court suspended respondent for three years; stayed execution of  
24 said suspension; and placed respondent on probation for five years on condition that he be

---

25  
26 <sup>5</sup>These findings of fact are based on the admitted factual allegations contained in the State  
27 Bar's motion to revoke respondent's probation, the declaration of Lydia Diners, and State Bar  
28 Exhibits 1-3 attached to said motion. (Rules Proc. of State Bar, rule 563(b)(3).) The declaration  
of Lydia Diners and State Bar Exhibits 1-3 are admitted into evidence pursuant to rule 563(e) of  
the Rules of Procedure.

1 actually suspended for two years and until he satisfies the requirements of standard 1.4(c)(ii).  
2 Respondent was also ordered to comply with other conditions of probation.

3 Pursuant to the Supreme Court order, respondent was ordered to comply with the  
4 following terms and conditions of probation, among others:

5 (1) submit written quarterly reports to the Office of Probation<sup>6</sup> on each January 10, April  
6 10, July 10 , and October 10 of the probationary period;

7 (2) submit proof of monthly mental health treatment (“mental health reports”) with each  
8 quarterly report;

9 (3) certify compliance with financial conditions relating to the possession of client trust  
10 funds (“CPA reports”) with each quarterly report;

11 (4) provide proof of monthly restitution payments to: (1) Reba Billick (or the Client  
12 Security Fund [“CSF”], if applicable), (2) Paul Castillo (or the CSF, if applicable), and (3) Tom  
13 Holton (or the CSF, if applicable) in each quarterly report;

14 (5) provide proof of monthly meetings with the Other Bar or other Twelve-Step Program;  
15 and

16 (6) promptly respond to inquiries from the Office of Probation regarding his probation  
17 compliance.

18 On May 31, 2002, the Office of Probation, by and through Probation Deputy Shuntinee  
19 Brinson (“Ms. Brinson”), provided respondent with, among other things, a copy of his  
20 disciplinary order imposing probation, a copy of the conditions of probation, and a letter  
21 confirming certain terms and conditions of probation, including suspension. The letter stated, in  
22 part, “**Failure to timely** submit reports or any other proof of compliance **will result in a non-**  
23 **compliance referral** to the State Bar Court Review Department or Enforcement Unit, Office of  
24 the Chief Trial Counsel.” (Exhibit 3, letter dated May 31, 2002, emphasis in original.) This  
25 letter was not returned to the State Bar as undeliverable.

---

26  
27  
28 <sup>6</sup>The Office of Probation was formerly known as the Probation Unit, Office of the Chief  
Trial Counsel.

1 The Supreme Court order became effective on June 15, 2002, thirty days after it was  
2 entered. (Cal. Rules of Court, rule 953(a).)<sup>7</sup>

3 Prior to January 2005, respondent had been in substantial compliance with the terms and  
4 conditions of his probation. From October 2002 through October 2004, respondent submitted  
5 quarterly reports, CPA reports, mental health reports, and proof of restitution payments.

6 In January 2005, respondent failed to submit his reports due for the January 10, 2005,  
7 reporting period.

8 On March 30, 2005, the Office of Probation received a faxed copy from respondent of his  
9 quarterly report due on January 10, 2005, which also contained respondent's CPA report due on  
10 January 10<sup>th</sup>, respondent's mental health report due on January 10<sup>th</sup>,<sup>8</sup> proof of monthly  
11 attendance at a Twelve-Step Recovery Program,<sup>9</sup> and proof of restitution payments for the  
12 months of October, November and December 2004. Respondent's faxed cover letter indicated  
13 that he had retained Michael Wine as counsel and would be filing a petition pursuant to standard  
14  
15  
16

---

17 <sup>7</sup>No proof was offered to establish that respondent had notice of the Supreme Court's  
18 May 16, 2002, order. However, the Clerk of the Supreme Court was required to promptly send a  
19 copy of the order to respondent once it was filed. (Cal. Rules of Court, rule 29.4(a).) Also,  
20 except with respect to arrests, it is presumed that official duties have been regularly performed  
21 unless the party against whom the presumption operates *proves* otherwise. (Evid. Code, §§ 606,  
22 660, 664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Thus, because respondent has not  
23 proved otherwise, the court must find the Supreme Court Clerk properly sent respondent a copy  
of the order promptly after it was filed. (*Ibid.*) And, because there is no evidence in the record  
that would support a finding to the contrary, the court finds that respondent actually received that  
copy of the order. (Cf. Evid. Code, §§ 604, 630, 641 [correctly addressed and properly mailed  
letter is presumed to have been received in the ordinary course of mail].)

24 <sup>8</sup>Although the letter of William H. Bresnick, M.D., dated November 24, 2004, was  
25 apparently accepted by the Office of Probation as sufficient proof of monthly mental health  
26 treatment for the October through December 2004 quarter, the court notes that there is no  
27 evidence that respondent complied with the mental health treatment requirement for the month of  
December 2004.

28 <sup>9</sup>The court also notes that this proof was to have been provided to the Office of Probation  
on a monthly basis, rather than with the quarterly report due on January 10, 2005.

1 1.4(c)(ii).<sup>10</sup>

2 This was the last quarterly report, CPA report, proof of restitution, and proof of monthly  
3 Other Bar/Twelve Step Recovery Program received by the Office of Probation from respondent.

4 As of April 10, 2005, Respondent had failed to submit the required reports or proof of  
5 compliance due on said date.

6 On April 11, 2005, Ms. Brinson left respondent a message reminding him to submit his  
7 April 2005 quarterly report and proof of restitution.

8 On April 20, 2005,<sup>11</sup> Ms. Brinson telephoned respondent and left him a message inquiring  
9 about his April 2005 quarterly reports and proof of compliance.

10 On April 21, 2005, respondent left a voice mail message with Ms. Brinson stating that he  
11 would submit his April quarterly reports and make restitution payments. Respondent also left his  
12 cell phone number.

13 On May 3, 2005, Ms. Brinson telephoned respondent and left a message requesting that  
14 respondent submit his April reporting documents, including proof of restitution.

15 On May 4, 2005, the Office of Probation received a faxed cover letter from Dr. William  
16 H. Bresnick, M.D., stating that respondent had met with him regularly from September 2, 2004,  
17 through April 12, 2005.

18 On May 4, 2005, Ms. Brinson spoke with Michael Wine ("Mr. Wine") who stated that he  
19 was representing respondent as counsel. That same day, Ms. Brinson mailed a letter to Mr. Wine  
20 reminding him of certain of respondent's probation conditions and respondent's non-compliance  
21 with those conditions. Ms. Brinson mailed a courtesy copy of that letter to respondent. Neither  
22 of these letters were returned to the State Bar as undeliverable.

23 On May 18, 2005, Ms. Brinson received a faxed cover sheet from Tom Holton stating  
24 that respondent had made monthly restitution payments of \$100.00 for the months of March,  
25

---

26 <sup>10</sup>However, as of August 22, 2005, respondent had not filed a petition for reinstatement  
27 pursuant to standard 1.4(c)(ii).

28 <sup>11</sup>Although the declaration of Lydia Dineros refers to April 20, 2004, this appears to be a  
typographical error.

1 April and May 2005. However, respondent did not submit proof of such payments to the Office  
2 of Probation.

3 On June 14, 2005, Ms. Brinson received a telephone call from Tom Holton stating that  
4 respondent had missed his June restitution payment. That same day, Ms. Brinson telephoned Mr.  
5 Wine and left a message for him stating that respondent had missed his June restitution payment  
6 to Mr. Holton.

7 At no time did respondent submit the required reports or proof of compliance due on July  
8 10, 2005.

9 On July 13, 2005, Probation Deputy Lydia Dineros ("Ms. Dineros") telephoned Mr. Wine  
10 about respondent's non-compliance. At that time, Mr. Wine gave Ms. Dineros permission to  
11 contact respondent directly about his non-compliance. That day, Ms. Dineros telephoned  
12 respondent at the aforementioned cell phone number and left him a message to call her back.  
13 However, respondent did not return Ms. Dineros's telephone call.

14 On July 15, 2005, Ms. Dineros mailed a letter to Mr. Wine reminding him of certain of  
15 respondent's probation conditions and respondent's non-compliance with those conditions. This  
16 letter was not returned to the State Bar as undeliverable.

17 On July 20, 2005, Ms. Dineros received notification from Tom Holton that respondent  
18 had not made restitution payments for June and July 2005.

19 On August 9, 2005, Ms. Dineros telephoned Mr. Wine about respondent's non-  
20 compliance. At that time, Mr. Wine stated that he was not really representing respondent in this  
21 probation matter but was merely acting as an intermediary. At that time, Mr. Wine provided Ms.  
22 Dineros with three telephone numbers for respondent. Ms. Dineros telephoned the first  
23 telephone number for respondent, but it was disconnected. Ms. Dineros telephoned the second  
24 telephone number - which was respondent's aforementioned cell phone number - and left a  
25 message for respondent to return her telephone call. Ms. Dineros telephoned the third number  
26 for respondent, but it was busy.

27 On August 10, 2005, Ms. Dineros again telephoned the aforementioned "third telephone  
28

1 number"<sup>12</sup> provided by Mr. Wine. At that time, the number was disconnected. That same day,  
2 Ms. Dineros telephoned respondent at the aforementioned cell phone number and left another  
3 message for respondent to call her back. However, respondent did not return Ms. Dineros's call.

4 On August 10, 2005, Ms. Dineros telephoned respondent's official membership records  
5 telephone number. At that time, a woman identified as "Melinda"<sup>13</sup> stated that respondent kept  
6 an office in the building, but that she did not know the direct telephone number for respondent.  
7 Melinda stated that she had seen respondent at the building the day before.

8 On August 10, 2005, Ms. Dineros sent an e-mail message to respondent at the e-mail  
9 address listed with Membership Records. In her message, Ms. Dineros notified respondent that  
10 she had been trying to reach him by telephone, and that the Office of Probation had been sending  
11 letters to Mr. Wine. Ms. Dineros requested that respondent contact her as soon as possible.  
12 Respondent did not respond to this e-mail message.

13 On August 15, 2005, Ms. Dineros spoke with Paul Castillo via telephone. At that time,  
14 he stated that he had received a total of \$5,000.00, in restitution payments from respondent.<sup>14</sup>

15 Respondent has not submitted proof of monthly restitution to Tom Holton since his  
16 December 2004, payment. However, Mr. Holton confirmed orally that he had received monthly  
17 payments through May 2005.

18 Respondent has not submitted proof of monthly restitution to Paul Castillo since his  
19 December 2004, payment.

20 On August 15, 2005, Ms. Dineros confirmed with CSF records that respondent has made  
21 restitution payments to the CSF totaling \$3,200.00 in connection with CSF's claim payment to  
22 Reba Billick in the principal amount of \$3,000.00. According to CSF records, since the  
23 aforementioned December 2004 payment, respondent made two additional \$100.00 payments to  
24

---

25 <sup>12</sup>Declaration of Lydia Dineros.

26 <sup>13</sup>Declaration of Lydia Dineros.

27 <sup>14</sup>Mr. Castillo had previously informed Ms. Brinson on March 29, 2005, that respondent  
28 had paid a total of \$5,000.00 in restitution to him.



1 CSF on January 18 and February 14, 2005.

2 Respondent has failed to: (1) submit the quarterly reports due on April 10 and July 10,  
3 2005; (2) timely submit the mental health report due on April 10, 2005; (3) submit the mental  
4 health report due on July 10, 2005; (4) submit CPA reports due on April 10 and July 10, 2005;  
5 provide proof of monthly meetings with the Other Bar or other Twelve-Step Program for the  
6 months of January through July 2005; (5) provide proof of compliance with restitution conditions  
7 due on April 10 and July 10, 2005; and (6) promptly respond to inquiries from the Office of  
8 Probation regarding his probation compliance.

#### 9 **IV. CONCLUSIONS OF LAW**

10 Bad faith is not a requirement for a finding of culpability in a probation violation matter;  
11 "instead, a 'general purpose or willingness' to commit an act or permit an omission is sufficient.  
12 (Citations.)" (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)  
13 Pursuant to section 6093(c) and rule 561 of the Rules of Procedure, the court concludes that the  
14 State Bar has demonstrated by a preponderance of the evidence that respondent wilfully violated  
15 certain conditions of probation ordered by the Supreme Court by failing to : (1) submit the  
16 quarterly reports due on April 10 and July 10, 2005; (2) timely submit the mental health report  
17 due on April 10, 2005; (3) submit the mental health report due on July 10, 2005; (4) submit CPA  
18 reports due on April 10 and July 10, 2005; (5) provide proof of monthly meetings with the Other  
19 Bar or other Twelve-Step Program for the months of January through July 2005; (6) provide  
20 proof of compliance with restitution conditions due on April 10 and July 10, 2005; and (7)  
21 promptly respond to inquiries from the Office of Probation regarding his probation compliance.  
22 These conclusions warrant the revocation of probation as provided by section 6093(b).

#### 23 **V. AGGRAVATING CIRCUMSTANCES**

24 In aggravation, respondent has a prior record of discipline. (Rules Proc. of State Bar, tit.  
25 IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i) ("standard").)

26 On May 16, 2002, the Supreme Court filed an order in Case No. S104922  
27 (State Bar Court Case No. 00-O-13331; 00-O-14988; 00-O-14999 (Cons.)), suspending  
28 respondent from the practice of law for three years, staying execution of said suspension; and

1 placing respondent on probation for five years subject to certain conditions of probation,  
2 including two years of actual suspension and until he satisfies the requirements of standard  
3 1.4(c)(ii). In this prior disciplinary matter, in which respondent stipulated to culpability and  
4 discipline, respondent's misconduct involved two clients and one non-client matter. Respondent  
5 was found culpable in one client matter of recklessly or repeatedly failing to perform legal  
6 services with competence in wilful violation of rule 3-110(A) of the Rules of Professional  
7 Conduct;<sup>15</sup> failing to respond promptly to reasonable status inquires of a client in wilful violation  
8 of Business and Professions Code section 6068(m);<sup>16</sup> withdrawing from employment in a  
9 proceeding before a tribunal without its permission in wilful violation of rule 3-700(A)(1);  
10 failing, upon termination of employment, to take reasonable steps to avoid reasonably  
11 foreseeable prejudice to a client in violation of rule 3-700(A)(2); failing to refund promptly any  
12 part of a fee paid in advance that had not been earned in violation of rule 3-700(D)(2);  
13 committing an act or acts involving moral turpitude, dishonesty or corruption in violation of  
14 section 6106 by misappropriating client funds; and failing to comply with the address  
15 requirements of section 6002.1 in violation of section 6068(j).

16 In another client matter, respondent was found culpable of recklessly or repeatedly failing  
17 to perform legal services with competence in violation of rule 3-110(A); failing to promptly  
18 respond to reasonable status inquiries of a client in violation of section 6068(m); wilfully  
19 disobeying a court order by not paying a sanction in violation of section 6103; improperly  
20 withdrawing from employment with a client in wilful violation of rule 3-700(A)(2); wilfully  
21 failing to refund unearned fees in violation of rule 3-700(D)(2); and wilfully violating section  
22 6068(i) for failing to cooperate in a State Bar investigation.

23 In the non-client matter, respondent was found to have committed an act involving moral  
24 turpitude, dishonesty or corruption in violation of section 6106 by signing a loan application with  
25

---

26 <sup>15</sup>Unless otherwise indicated, all further references to rule(s) refer to the Rules of  
27 Professional Conduct of the State Bar of California.

28 <sup>16</sup>Unless otherwise indicated, all further references to section(s) refer to provisions of the  
California Business and Professions Code.

1 gross negligence and reckless disregard for the truth or falsity of the information contained  
2 therein and to have violated section 6068(a) by failing to support the Constitution and laws of the  
3 United States and of this state by providing false information in order to obtain a student loan.

4 In aggravation, multiple acts of wrongdoing or a pattern of misconduct, as well as  
5 significant harm to a client(s), the public or the administration of justice, were found. In  
6 mitigation, it was noted that, according to respondent, he suffered from serious emotional  
7 problems during all of his young adulthood and began to take ketamine to numb his emotional  
8 pain. According to respondent, he became addicted to ketamine. In 2000, respondent  
9 successfully completed a residential rehabilitation program. Based upon advice given to him  
10 after completion of that program, respondent attended a second rehabilitation program. He  
11 contacted an attorney who said he would arrange for someone to wrap up his remaining cases.  
12 Respondent sent the attorney a letter describing the cases and several files. However, respondent  
13 did not file substitutions of attorney or motions to withdraw in the matters and did not follow up  
14 to see if the cases were successfully transferred.<sup>17</sup>

15 Further aggravating circumstances in the instant matter include the fact that respondent  
16 engaged in multiple acts of misconduct in this matter. (Standard 1.2(b)(ii).)

17 Respondent's failure to fully comply with the conditions of his probation as set forth  
18 above, after being reminded of his obligation to do so by the Office of Probation demonstrates  
19 indifference toward rectification of or atonement for the consequences of his misconduct.  
20 (Standard 1.2(b)(v).)

## 21 **VI. MITIGATING CIRCUMSTANCES**

22 Respondent did not participate either in person or through counsel in this disciplinary  
23 proceeding. No mitigating evidence was therefore offered on respondent's behalf or received  
24 into evidence, and none can be gleaned from this record.

## 25 **VII. DISCUSSION**

26  
27  
28 <sup>17</sup>It is unclear from the parties' stipulation in this prior disciplinary matter whether or not  
the client matters involved in the disciplinary proceeding were ones sent to this other attorney.

1 Protection of the public and rehabilitation of the attorney are the primary goals of  
2 disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr.  
3 445, 452; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) In  
4 determining the level of discipline, the court must consider the “total length of stayed suspension  
5 which could be imposed as an actual suspension and the total amount of actual suspension earlier  
6 imposed as a condition of the discipline at the time probation was granted.” (*In the Matter of*  
7 *Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

8 Section 6093 authorizes the revocation of probation for a violation of a probation  
9 condition, and standard 1.7 requires that the court recommend a greater discipline in this matter  
10 than that imposed in the underlying disciplinary proceeding. However, the extent of the  
11 discipline to recommend is dependent, in part, on the seriousness of the probation violation and  
12 respondent’s recognition of his misconduct and his efforts to comply with the conditions. (*In the*  
13 *Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) Furthermore, “[t]he violation of a  
14 probation condition significantly related to the attorney’s prior misconduct merits the greatest  
15 discipline, especially if the violation raises a serious concern about the need to protect the public  
16 or shows the attorney’s failure to undertake steps toward rehabilitation.” (*In the Matter of*  
17 *Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151.)

18 In this matter, the court is concerned about respondent’s failure to comply with the above-  
19 mentioned conditions of his probation, as well as his failure to participate in this disciplinary  
20 proceeding. “[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney  
21 probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept.  
22 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.)  
23 In addition, “an attorney probationer’s filing of quarterly probation reports is an important step  
24 towards the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr.  
25 at p. 763.)

26 The court notes that respondent participated in his prior disciplinary proceeding and even  
27 entered into a stipulation in the underlying disciplinary matter. Respondent was therefore well  
28 aware of the terms and conditions of his probation. In fact, prior to January 2005, respondent had

1 been in substantial compliance with the terms and conditions of his probation. However, his  
2 January reports and proof of compliance were untimely, and respondent failed to : (1) submit the  
3 quarterly reports due on April 10 and July 10, 2005; (2) timely submit the mental health report  
4 due on April 10, 2005; (3) submit the mental health report due on July 10, 2005; (4) submit CPA  
5 reports due on April 10 and July 10, 2005; (5) provide proof of monthly meetings with the Other  
6 Bar or other Twelve-Step Program for the months of January through July 2005; (6) provide  
7 proof of compliance with restitution conditions due on April 10 and July 10, 2005; and (7)  
8 promptly respond to inquiries from the Office of Probation regarding his probation compliance.  
9 Respondent's failure to provide proof of monthly restitution, monthly mental health treatment  
10 and monthly meetings with the Other Bar or other Twelve-Step Program raises a serious concern  
11 about protection of the public. These failures are all the more troubling as respondent and his  
12 counsel were made aware of respondent's non-compliance with his probation conditions. Given  
13 respondent's history of emotional and substance abuse problems, respondent's failure to comply  
14 with probation conditions after substantially complying with such conditions for over two years,  
15 combined with respondent's failure to participate in this proceeding and offer any explanation  
16 to this court for his non-compliance is of great concern to the court.

17 In the disciplinary matter which underlies this probation proceeding, respondent was  
18 suspended from the practice of law for three years; the execution of said suspension was stayed;  
19 and respondent was placed on probation for five years on condition that he be actually suspended  
20 for two years and until he satisfies the requirements of standard 1.4(c)(ii). Respondent was also  
21 ordered to comply with other conditions of probation.

22 As a result of respondent's probation violations, the State Bar recommends in this matter,  
23 inter alia, that respondent be actually suspended for three years and until he satisfies the  
24 requirements of standard 1.4(c)(ii). The court concurs. Given the nature of the probation  
25 conditions which were violated, and respondent's failure to participate in this proceeding and  
26 offer any explanation for his non-compliance with his probation conditions, the court finds that  
27 substantial discipline is warranted.

28 Accordingly, the court finds good cause to GRANT the State Bar's motion to revoke

1 respondent's probation.

2 **VIII. DISCIPLINE RECOMMENDATION**

3 The court hereby recommends to the Supreme Court that respondent's probation pursuant  
4 to the Supreme Court order in Case No. S104922 (State Bar Court Case No. 00-O-13331; 00-O-  
5 14988; 00-O-14999 (Cons.)) be revoked, that the previous stay of execution of the suspension be  
6 lifted, and that respondent R. SCOTT DERVAES II, A.K.A. R. SCOTT DERVAES, JR. be  
7 actually suspended from the practice of law for three years and until he has shown proof  
8 satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability  
9 in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for  
10 Professional Misconduct.

11 It is not recommended that respondent be ordered to comply with rule 955 of the  
12 California Rules of Court, as respondent was ordered to comply with rule 955 in Supreme Court  
13 Case No. S104922 (State Bar Court Case No. 00-O-13331; 00-O-14988; 00-O-14999 (Cons.))  
14 and has remained actually suspended since June 15, 2002.<sup>18</sup>

15 It is not recommended that respondent be ordered to take and pass the Multistate  
16 Professional Responsibility Examination, as he was ordered to do so in Supreme Court Case No.  
17 S104922 (State Bar Court Case No. 00-O-13331; 00-O-14988; 00-O-14999 (Cons.)) and, if he  
18 has not already complied with this order, remains obligated to do so.

19 It is also recommended that, within one (1) year of the effective date of the discipline  
20 herein, respondent shall provide to the Office of Probation satisfactory proof of attendance at a  
21 session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San  
22 Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-  
23 2299, and passage of the test given at the end of that session, unless respondent has already done  
24 so within two years prior to the effective date of the Supreme Court's final disciplinary order in

---

25  
26 <sup>18</sup>Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice  
27 of the State Bar's official membership records. The court also notes that these records reveal that  
28 respondent has not been entitled to practice law since September 1, 2001, the date his  
administrative inactive enrollment commenced as a result of his failure to comply with Minimum  
Continuing Legal Education requirements.

1 this matter. Arrangements to attend Ethics School must be made in advance by calling (213)  
2 765-1287, and paying the required fee. This requirement is separate from any Minimum  
3 Continuing Legal Education Requirement ("MCLE"), and respondent shall not receive MCLE  
4 credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar.).

5 **IX. ORDER REGARDING INACTIVE ENROLLMENT**

6 The State Bar requests that respondent be involuntarily enrolled inactive pursuant to  
7 section 6007(d). The requirements of section 6007(d)(1) have been met: respondent is subject to  
8 a stayed suspension; he has been found to have violated probation conditions; and it has been  
9 recommended that respondent be actually suspended due to said violations.

10 IT IS THEREFORE ORDERED that respondent, R. SCOTT DERVAES II, A.K.A. R.  
11 SCOTT DERVAES, JR, be involuntarily enrolled as an inactive member of the State Bar of  
12 California pursuant to section 6007(d). This enrollment shall be effective five days after service  
13 of this order.

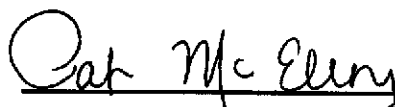
14 IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by section  
15 6007(d)(2).

16 IT IS FURTHER RECOMMENDED that respondent's actual suspension in this matter  
17 commence as of the date of his inactive enrollment pursuant to this order. (Section 6007(d)(3).)

18 **X. COSTS**

19 It is further recommended that costs be awarded to the State Bar pursuant to section  
20 6086.10, and that those costs be payable in accordance with section 6140.7.

21  
22  
23 Dated: October 17, 2005

24   
25 PAT McELROY  
26 Judge of the State Bar Court  
27  
28

**CERTIFICATE OF SERVICE**  
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on October 17, 2005, I deposited a true copy of the following document(s):

**ORDER GRANTING MOTION TO REVOKE PROBATION AND ORDER  
OF INVOLUNTARY INACTIVE ENROLLMENT**

in a sealed envelope for collection and mailing on that date as follows:

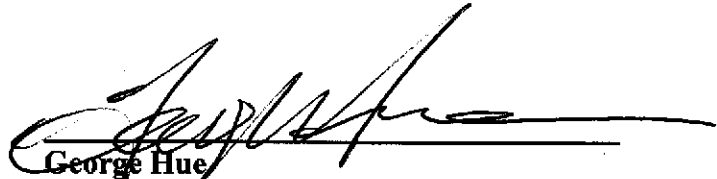
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**R. SCOTT DERVAES, JR.**  
**140 2ND STREET, 6TH FL**  
**SAN FRANCISCO CA 94105-3727**

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**JAYNE KIM, Probation, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **October 17, 2005.**



George Hue  
Case Administrator  
State Bar Court