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HEARING DEPARTMENT - SAN FRANCISCO

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In the Matter of)
DONALD B. KRONENBERG,)
Member No. 98590,)
A Member of the State Bar.)

Case No. 04-PM-10407-JMR
DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

I. INTRODUCTION

Based upon alleged probation violations, the Office of Probation, represented by Supervising Attorney Jayne Kim, filed a motion pursuant to Business and Professions Code sections 6093(b) and 6093(c)¹ and rules 560 et seq. of the Rules of Procedure of the State Bar to revoke the probation of Respondent Donald B. Kronenberg, imposed by the Supreme Court in its October 16, 2002, order in case number S107949 (State Bar Court case no. 00-J-15199). Respondent did not respond to the motion or 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, this court finds by a preponderance of the evidence that Respondent wilfully failed to comply with the terms of his probation. (Section 6093(c).) As a result, the court grants the Office of Probation's motion to revoke Respondent's probation and its request to involuntarily enroll him as an inactive member of the State Bar pursuant to section 6007(d). The court recommends that Respondent's probation be revoked, that the previously-

¹Unless otherwise indicated, all further references to section refer to provisions of the Business and Professions Code.

1 ordered stay be lifted and that he be actually suspended from the practice of law for two years and
2 until he demonstrates his rehabilitation pursuant to standard 1.4(c)(ii) of the Standards for Attorney
3 Sanctions for Professional Misconduct.²

4 II. FINDINGS OF FACT

5 A. Jurisdiction

6 Respondent was admitted to the practice of law in the State of California on June 12, 1981,
7 was a member at all times pertinent to the allegations herein, and is currently a member of the State
8 Bar of California.³

9 B. Probation Violations

10 On February 19, 2002, the State Bar Court filed an order approving the stipulation of the
11 parties in State Bar Court case no. 00-J-15199, recommending discipline consisting of suspension
12 for two years and until compliance with standard 1.4(c)(ii), execution stayed, two years probation
13 on conditions including actual suspension of six months, among other things. A copy of the
14 stipulation and the State Bar Court's order approving same were properly served upon Respondent
15 on February 19, 2002, at his State Bar membership records address by first-class mail, postage
16 prepaid.

17 On October 16, 2002, the California Supreme Court filed an order in case no. S107949
18 ("Supreme Court order") accepting the State Bar Court's recommendation and ordering Respondent
19 to comply with the conditions of probation recommended.

20 Pursuant to the Supreme Court order, Respondent was ordered to comply with the following
21 terms and conditions of probation, among others:

22 (a) During the period of probation, to submit a written report on January 10, April 10, July
23 10 and October 10 of each year or part thereof during which the probation is in effect to the Office

24
25 ²The Standards for Attorney Sanctions for Professional Misconduct are found in title IV
of the Rules of Procedure of the State Bar. All further references to standards are to this source.

26
27 ³Pursuant to Evidence Code section 452, the court takes judicial notice of its records and
28 notes that effective February 6, 2004, Respondent was suspended from practice of law for failure
to submit proof of passage of the Multistate Professional Responsibility Examination as ordered
by the Supreme Court in the underlying disciplinary matter.

1 of Probation, stating under penalty of perjury that he has complied with all provisions of the State
2 Bar Act and Rules of Professional Conduct during said period;

3 (b) Submit to the Office of Probation, by November 15, 2003, satisfactory proof of
4 completion of six hours of MCLE courses; and

5 (c) Report to Membership Records and the Office of Probation, within ten days, all changes
6 of information, including address and telephone number.

7 The Supreme Court order became effective on November 15, 2002, thirty days after it was
8 entered. (Cal. Rules of Court, rule 953(a).) It was properly served upon Respondent in the manner
9 prescribed by rule 24(a) of the California Rules of Court, at Respondent's official address in
10 accordance with section 6002.1.

11 On November 8, 2002, the Office of Probation wrote a letter to Respondent reminding him
12 of the terms and conditions of his suspension and probation imposed pursuant to the Supreme Court
13 order. The letter reminded Respondent of his obligations to file quarterly reports; to submit proof,
14 by November 15, 2003, of completion of six hours of MCLE courses; and to report to Membership
15 Records and the Office of Probation all changes of information, including current office address and
16 telephone number or other address for State Bar purposes, among other things. The letter also
17 warned Respondent that failure to comply with the probation conditions could lead to further
18 disciplinary proceedings. Enclosed with the letter were copies of the Supreme Court order, the
19 probation conditions portion of the stipulation and an instruction sheet and form to use in submitting
20 quarterly reports.

21 The November 8, 2002 letter was mailed on that same date to Respondent's official address
22 via the United States Postal Service with first-class postage prepaid. The letter to Respondent was
23 not returned as undeliverable.

24 The Office of Probation sent Respondent a second reminder letter on December 16, 2003.
25 The letter was not returned by the postal service as undeliverable.

26 On January 29, 2004, the Probation Deputy attempted to reach Respondent by telephone by
27 calling the number listed on his membership record. However, the number was disconnected.

28 Respondent has not submitted the quarterly report due on January 10, 2004. He also has not

1 submitted proof of the completion of six hours of MCLE courses by November 15, 2003. In
2 addition, Respondent has not notified Membership Records or the Office of Probation of a change
3 in the telephone number to be used for State Bar purposes.

4 As of January 29, 2004, the date of filing of the motion to revoke probation, Respondent had
5 not complied with the aforementioned provisions of the Supreme Court order.

6 III. CONCLUSIONS OF LAW

7 Bad faith is not a requirement for a finding of culpability in a probation violation matter;
8 “instead, a ‘general purpose or willingness’ to commit an act or permit an omission is sufficient.
9 (Citations.)” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

10 Pursuant to sections 6093(b) and (c) and rule 561 of the Rules of Procedure, the court
11 concludes that the Office of Probation has demonstrated by a preponderance of the evidence that
12 Respondent wilfully violated the conditions of probation ordered as required by the Supreme Court
13 order by failing to submit to the Office of Probation the quarterly report due January 10, 2004; failing
14 to submit to the Office of Probation proof of completion of six hours of MCLE courses by November
15 15, 2003; and failing to give notice to Membership Records and the Office of Probation of a change
16 in the telephone number for State Bar purposes as he was required to do within ten days of such
17 change.

18 IV. AGGRAVATING CIRCUMSTANCES

19 In aggravation, Respondent has one prior record of discipline. (Standard 1.2(b)(i).) As
20 previously discussed, discipline was imposed in Supreme Court case number S107949 as a result
21 of discipline imposed by the Disciplinary Board of the Washington State Bar. It was found that the
22 discipline imposed in Washington in connection with three client matters would warrant the
23 imposition of discipline in California for the violation of the Rules of Professional Conduct, rules
24 4-100 (preserve identity of funds), 4-200 (charging an unconscionable fee), and 3-500 (failure to
25 keep clients reasonably informed), and sections 6068(d) (false statement or misrepresentation to
26 tribunal), and 6068(m) (keep clients reasonably informed).

27 Respondent engaged in multiple acts of misconduct by failing to comply with multiple
28 conditions of probation. (Standard 1.2(b)(ii).)

1 Respondent significantly harmed the administration of justice as his failure to comply with
2 the conditions of his probation made it more much difficult for the State Bar to appropriately monitor
3 him in seeking to insure the protection of the public and the courts. (Standard 1.2(b)(iv).)

4 Respondent's failure to comply with the probation conditions after being reminded by the
5 Office of Probation demonstrates indifference toward rectification of or atonement for the
6 consequences of his misconduct. (Standard 1.2(b)(v).)

7 V. MITIGATING CIRCUMSTANCES

8 No mitigating evidence was offered or received on Respondent's behalf, and none can be
9 gleaned from the record.

10 VI. DISCUSSION

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

18 Section 6093 authorizes the revocation of probation for a violation of a probation condition,
19 and standard 1.7 requires that the court recommend a greater discipline in this matter than that
20 imposed in the underlying disciplinary proceeding. However, the period of actual suspension
21 recommended in the instant case cannot exceed the period of stayed suspension imposed in the
22 underlying proceeding. (Rules Proc. of State Bar, rule 562.) The extent of the discipline to
23 recommend is dependent, in part, on the seriousness of the probation violation and Respondent's
24 recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of*
25 *Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

26 The Office of Probation requests that Respondent's probation imposed by the Supreme Court
27 order be revoked, that the stay of execution of the suspension previously imposed be lifted, and that
28 Respondent be actually suspended for two years and until he complies with standard 1.4(c)(ii). The

1 court agrees.

2 In this matter, the court is concerned about Respondent's failure to comply with the above-
3 mentioned conditions of his probation. The court notes that Respondent participated in his prior
4 disciplinary proceeding and entered into a stipulation to resolve it. Therefore, Respondent was well
5 aware of the terms and conditions of his disciplinary probation, yet failed to comply with them.

6 "[A] probation 'reporting requirement permits the State Bar to monitor [an attorney
7 probationer's] compliance with professional standards.'" (*In the Matter of Weiner* (Review Dept.
8 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In
9 addition, "an attorney probationer's filing of quarterly probation reports is an important step towards
10 the attorney's rehabilitation." (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)
11 Thus, Respondent's failure to file his quarterly report is serious misconduct. Moreover, he did not
12 comply with the conditions that he complete six hours of MCLE courses and give notice of a change
13 in his telephone number for State Bar purposes. There is no indication that Respondent recognized
14 his misconduct or has made any effort to comply with the conditions.

15 In consideration of Respondent's violation of probation conditions, and his lack of
16 participation in these proceedings, and his continuing noncompliance with probation conditions
17 despite the Office of Probation's efforts to secure compliance, the court does not believe it
18 worthwhile to recommend again placing him on probation subject to conditions. The prior
19 disciplinary order "provided [Respondent] an opportunity to reform his conduct to the ethical
20 strictures of the profession. His culpability in [the matter] presently under consideration sadly
21 indicates either his unwillingness or inability to do so." (*Arden v. State Bar* (1987) 43 Cal.3d 713,
22 728.)

23 Accordingly, the court finds good cause to GRANT the motion to revoke Respondent's
24 probation and recommends the imposition of the discipline set forth below.

25 VII. DISCIPLINE RECOMMENDATION

26 The court hereby recommends to the Supreme Court that Respondent's probation in Supreme
27 Court case no. S107949 (State Bar Court case no. 00-J-15199) be revoked, that the previous stay
28 of execution of the suspension be lifted, and that Respondent Donald B. Kronenberg be actually

1 suspended from the practice of law for two years and until he complies with standard 1.4(c)(ii),
2 Standards for Attorney Sanctions fo Professional Misconduct.

3 It is also recommended that Respondent be ordered to comply with the requirements of rule
4 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme
5 Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the
6 effective date of the order showing his compliance with said order.⁴

7 It is not recommended that Respondent be ordered to take and pass the Multistate
8 Professional Responsibility Examination as he was ordered to do so in the underlying matter, and
9 is currently on suspension for noncompliance.

10 **VIII. COSTS**

11 The court recommends that costs be awarded to the State Bar pursuant to Business and
12 Professions Code section 6086.10, and that those costs be payable in accordance with section 6140.7.

13 **IX. ORDER REGARDING INACTIVE ENROLLMENT**

14 The Office of Probation requests that Respondent be involuntarily enrolled inactive pursuant
15 to section 6007(d). The requirements of section 6007(d)(1) have been met: Respondent was subject
16 to a stayed suspension, was found to have violated probation conditions, and it has been
17 recommended that Respondent be actually suspended due to said violations.

18 IT IS THEREFORE ORDERED that Respondent Donald B. Kronenberg be involuntarily
19 enrolled as an inactive member of the State Bar of California pursuant to section 60007(d). This
20 enrollment shall be effective three days following service of this order.

21 IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by section
22 6007(d)(2).

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⁴Respondent is required to file a rule 955(c) affidavit even if he has no clients.
(*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

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

Dated: April 9, 2004



JOANN M. REMKE
Judge of the State Bar Court

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

I am a Case Administrator of the State Bar Court. 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 April 9, 2004, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

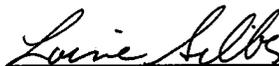
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DONALD BRUCE KRONENBERG
P O BOX 20254
SEATTLE WA 98102

- [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 **April 9, 2004.**



Laine Silber
Case Administrator
State Bar Court