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STATE BAR COURT
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THE STATE BAR COURT
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 05-O-02276-RMT
ULYSSES GRANT PLUMMER III,)	DECISION
Member No. 86628,)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default proceeding, respondent **ULYSSES GRANT PLUMMER III** is found culpable, by clear and convincing evidence, of failing to comply with the conditions of his probation. The court recommends that respondent be suspended from the practice of law for three years, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law for three years and until he makes restitution, and until he has shown proof of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct,¹ 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

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) on June 9, 2005. (Rules Proc. of State Bar, rule 60.) The State Bar received a return receipt signed by a "Joan Toussart."

¹All further references to standards (std.) are to this source.

1 Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

2 On motion of the State Bar, respondent's default was entered on July 26, 2005. Respondent
3 was enrolled as an inactive member under Business and Professions Code section 6007(e)² on July
4 29, 2005.

5 Respondent did not participate in the disciplinary proceedings. The court took this matter
6 under submission on August 15, 2005.

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

8 All factual allegations of the NDC are deemed admitted upon entry of respondent's default
9 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
10 200(d)(1)(A).)

11 **A. Jurisdiction**

12 Respondent was admitted to the practice of law in California on May 31, 1979, and has since
13 been a member of the State Bar of California.

14 **B. Failure to Comply With Probation Conditions**

15 On August 31, 2001, the California Supreme Court ordered respondent suspended from the
16 practice of law for three years, that execution of the suspension be stayed, and that he be placed on
17 probation for three years subject to the conditions of probation, including an actual suspension of
18 one year and restitution, as recommended by the Hearing Department of the State Bar Court in its
19 order approving stipulation filed May 9, 2001. (Supreme Court case No. S098497, State Bar Court
20 case No. 97-O-17850; 98-O-01074 (Cons.))

21 Pursuant to the Supreme Court Order (SCO), effective September 30, 2001, respondent was
22 to comply with certain terms and conditions of probation, including, but not limited to, the
23 following:

- 24 1. Make restitution to Diane Mims (or the Client Security Fund, if applicable) in the
25 amount of \$13,001.51, plus interest at the rate of 10 percent per annum from
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27 ²All references to section are to the Business and Professions Code, unless otherwise
28 indicated.

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August 8, 1995, and provide proof of such restitution to the Office of Probation in his quarterly reports;

2. Make restitution to Vickey Lott (or the Client Security Fund, if applicable) in the amount of \$500, plus interest at the rate of 10 percent per annum from November 7, 1997, and provide proof of such restitution to the Office of Probation in his quarterly reports; and

3. Complete 10 hours of live instruction in legal ethics and law practice management continuing legal education courses, and provide proof of completion to the Office of Probation in his quarterly reports.

Notice of the SCO was properly served upon respondent in the manner prescribed by California Rules of Court, rule 24(a), at respondent's official address in accordance with section 6002.1.

On September 30, 2001, the Client Security Fund paid Diane Mims \$13,251.81.

On October 25, 2001, the Office of Probation sent respondent a letter at his official address, reminding him of the probation conditions. The letter was not returned as undeliverable.

Respondent failed to do the following:

- 1. Make restitution to Diane Mims (or the Client Security Fund);
- 2. Make restitution to Vickey Lott (or the Client Security Fund); and
- 3. Complete 10 hours of continuing legal education courses in legal ethics and law practice management.

Counts 1 and 2 – Business and Professions Code Section 6068, Subdivision (k)

The State Bar alleges that respondent violated section 6068, subdivision (k), in two counts³ by failing to comply with the conditions attached to his disciplinary probation as discussed above.

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

³Respondent's failure to comply with three probation conditions was charged as two separate violations of section 6068, subdivision (k). Such allegation is unnecessary. His misconduct is relevant to the degree of discipline but not to culpability.

1 The State Bar has shown by clear and convincing evidence that respondent wilfully violated
2 section 6068, subdivision (k), by failing to make restitution to Diane Mims or Vickey Lott (or the
3 Client Security Fund) in count one and by failing to complete 10 hours of continuing legal education
4 courses in legal ethics and law practice management in count two pursuant to the SCO.

5 **IV. Mitigating and Aggravating Circumstances**

6 **A. Mitigation**

7 No mitigating factor was submitted into evidence. (Std. 1.2(e).)

8 **B. Aggravation**

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

10 Respondent has two prior records of discipline. (Std. 1.2(b)(i).) In his first prior record, on
11 April 25, 1996, respondent, upon stipulation, was suspended for one year, stayed, and placed on
12 probation for one year with conditions for his misconduct involving two clients (Supreme Court case
13 No. S051875, State Bar Court case No. 93-O-18188 et al.).

14 In the underlying matter, respondent stipulated to three years' stayed suspension, three years'
15 probation and one year's actual suspension and to comply with certain conditions, as discussed
16 above, for his misconduct involving two clients – misappropriation, failure to perform with
17 competence and failure to provide a proper accounting (Supreme Court case No. S098497, State Bar
18 Court case No. 97-O-17850; 98-O-01074 (Cons.)).

19 Respondent committed multiple acts of wrongdoing. (Std. 1.2(b)(ii).) He violated three
20 separate conditions of probation.

21 Respondent's misconduct harmed the administration of justice by failing to repay the Client
22 Security Fund in the amount of \$13,251.81. (Std. 1.2(b)(iv).)

23 Respondent demonstrated indifference toward rectification of or atonement for the
24 consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to make restitution or attend courses
25 in ethics and law practice management.

26 Respondent's failure to participate in this proceeding prior to the entry of his default is a
27 serious aggravating factor. (Std. 1.2(b)(vi).)

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V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.3.) Disciplinary probation serves the critical function of protecting the public and rehabilitating the attorney. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

Respondent is found culpable of violating his probation conditions. The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 1.7(b) and 2.6.)

Standard 1.7(b) provides that if an attorney has a record of two prior impositions of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.)

The extent of the discipline to recommend in this matter is dependent, in part, on the nature of the probation violation and its relationship to respondent’s prior misconduct. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. 525, 540.)

The State Bar urges disbarment, given standard 1.7(b), respondent’s two prior records of discipline and his inability to adhere to the terms of the probation imposed by the Supreme Court. In the alternative, the State Bar recommends an actual suspension of three years.

Although standard 1.7(b) proposes disbarment, there is no supporting case law to justify the recommended discipline under the particular facts in this proceeding. While respondent has demonstrated unwillingness or inability to comply with his professional obligations and duties, his failure to comply with the probation conditions in this instant matter does not warrant disbarment.

There is one comparable case in which the attorney was disbarred for his probation

1 violations. But it is clearly distinguishable in that the attorney had four prior records of discipline
2 and a history of serious professional misconduct. In *In the Matter of Rose* (Review Dept. 1997) 3
3 Cal. State Bar Ct. Rptr. 646, during 18 of the 26 years of his practice, the attorney committed
4 professional misconduct or was actually suspended as a result of that misconduct, including client
5 abandonments, probation violations and failure to file timely the affidavit required by the Rules of
6 Court, rule 955. As a result, the Review Department found that he had ample opportunity to
7 conform his conduct to the ethical requirements of the profession, but has repeatedly failed or
8 refused to do so in his 26 years of practice and that, therefore, disbarment was appropriate.

9 Other cases involved revocation of probation and therefore, the recommended actual
10 suspension may not exceed the entire period of stayed suspension. (Rules Proc. of State Bar, rule
11 562.)

12 In *In the Matter of John Henry Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81,
13 a probation revocation matter, an attorney violated his disciplinary probation by failing to pay
14 restitution and by filing a tardy, incomplete quarterly probation report. He had a record of prior
15 discipline. The attorney was actually suspended for one year and until he completes restitution.

16 In *In the Matter of Charles Clinton Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr.
17 63, three consolidated matters involving a probation revocation matter and two original disciplinary
18 matters, an attorney was actually suspended for three years for violating his probation conditions but
19 disbarred for the two original disciplinary matters. He also had one prior record of discipline and
20 defaulted in the consolidated matters.

21 Therefore, in view of the case law, the aggravating evidence, the absence of mitigating
22 circumstances and the seriousness of respondent's probation violations, disbarment is not warranted
23 at this time but a lengthy actual suspension of three years and until he makes restitution and until he
24 shows rehabilitation would be adequate and appropriate to protect the public and to preserve public
25 confidence in the profession.

26 VI. Recommended Discipline

27 Accordingly, the court hereby recommends that respondent **ULYSSES GRANT**
28 **PLUMMER III** be suspended from the practice of law for three years, that execution of said

1 suspension be stayed, and that respondent be actually suspended from the practice of law for three
2 years and until he makes restitution to the Client Security Fund in the amount of \$13,251.81 and to
3 Vickey Lott (or the Client Security Fund, if applicable) in the amount of \$500, plus interest at the
4 rate of 10 percent per annum from November 7, 1997, and until he files and the State Bar Court
5 grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

6 It is also recommended that respondent be ordered to comply with any probation conditions
7 hereinafter imposed by the State Bar Court as a condition for terminating respondent's actual
8 suspension. (Rules Proc. of State Bar, rule 205.)

9 It is further recommended that respondent remain actually suspended until he has shown
10 proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and
11 ability in the general law pursuant to standard 1.4(c)(ii). (Rules Proc. of State Bar, rule 205.)

12 It is also recommended that the Supreme Court order respondent to comply with California
13 Rules of Court, rule 955, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective
14 date of its order imposing discipline in this matter. **Wilful failure to comply with the provisions
15 of rule 955 may result in revocation of probation, suspension, disbarment, denial of
16 reinstatement, conviction of contempt, or criminal conviction.**⁴

17 It is further recommended that respondent take and pass the Multistate Professional
18 Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners,
19 MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287)
20 and provide proof of passage to the Office of Probation, within one year of the effective date of the
21 discipline herein. Failure to pass the MPRE within the specified time results in actual suspension
22 by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule
23 951(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

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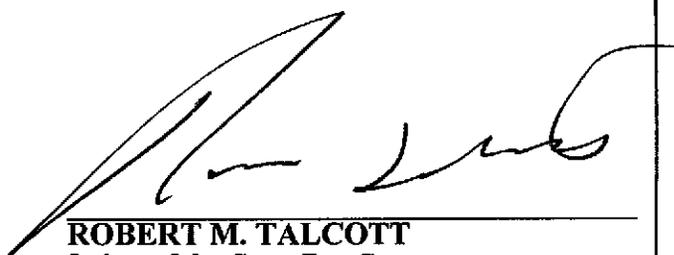
27 ⁴Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify.
28 (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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VII. Costs

The court recommends that costs be awarded to the State Bar pursuant to section 6086.10, and paid in accordance with section 6140.7.

Date: October 25, 2005



ROBERT M. TALCOTT
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 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 Los Angeles, on October 26, 2005, I deposited a true copy of the following document(s):

DECISION

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

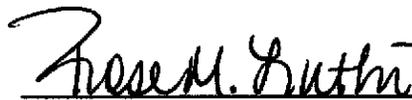
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ULYSSES G. PLUMMER, III
LAW OFC ULYSSES PLUMMER
5753 UPLANDER WAY
CULVER CITY CA 90230-6605

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

CHARLES CALIX, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 26, 2005**.



Rose M. Luthi
Case Administrator
State Bar Court