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PUBLIC MATTER

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

8 In the Matter of 9 DENNIS VANCE MILNER, 10 Member No. 113464, 11 <u>A Member of the State Bar.</u>	}	Case No. 05-PM-04241-JMR DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT
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I. INTRODUCTION

On September 20, 2005, based upon alleged probation violations, the State Bar of California's Office of Probation (State Bar) filed a motion, under Business and Professions Code section 6093, subdivisions (b) and (c)¹ and rules 560 through 566 of the Rules of Procedure of the State Bar,² to revoke the probation imposed on respondent Dennis Vance Milner in the Supreme Court's September 10, 2004, order in case number S115929 (State Bar Court case number 04-PM-12035). In its motion, the State Bar also requests that respondent be involuntarily enrolled as an inactive member of the State Bar under section 6007, subdivision (d). The State Bar was represented by Supervising Attorney Terrie Goldade. Respondent did not file a response to the State Bar's motion or otherwise participate in this proceeding even though he was properly served with a copy of the motion by certified mail, return receipt requested, at his latest address shown on the official

¹Unless otherwise noted, all further statutory references are to this code.

²Unless otherwise noted, all further rule references are to these Rules of Procedure.

1 membership records of the State Bar (official address)³ (§ 6002.1, subd. (c); rules 60(a), 563(a); see
2 also *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108 [service under section 6002.1 is deemed
3 complete when mailed even if the respondent attorney does not receive it]). Respondent's failure
4 to file a response to the State Bar's motion constitutes an admission of the factual allegations
5 contained in the motion and its supporting documents. (Rule 563(b)(3).)

6 For the reasons stated below, this court finds, by a preponderance of the evidence (§ 6093,
7 subd. (c); Rules Proc. of State Bar, rule 561), that respondent is culpable of two of the three
8 probation violations alleged in the State Bar's motion. As a result of these willful failures to comply
9 with the probation conditions, the court grants the State Bar's motion to revoke respondent's
10 probation and its request to involuntarily enroll him as an inactive member of the State Bar. In
11 addition, the court recommends that respondent's probation be revoked, that the previously-ordered
12 stay of the suspension be lifted, and that respondent again be placed on one year's stayed suspension
13 and three years' probation on conditions, including one year's actual suspension.

14 II. FINDINGS OF FACT

15 A. Jurisdiction

16 Respondent was admitted to the practice of law in the State of California on June 13, 1984,
17 and has been a member of the State Bar since that time.

18 B. Probation Violations

19 On August 1, 2003, the Supreme Court filed an order in case number S115929 (State Bar
20 Court case numbers 99-O-10794 and 02-O-15245 (consolidated)) in which it placed respondent on
21 one year's stayed suspension and three years' probation on conditions, including restitution, but no
22 actual suspension (2003 Supreme Court order).⁴

23 The probation conditions imposed on respondent under the 2003 Supreme Court order

24
25 ³The clerk of this court properly served, on respondent by first class mail at his official
26 address, copies of (1) the court's September 23, 2005, notice of assignment and (2) the court's
27 October 20, 2005, submission order. However, both of those copies were returned undeliverable
to the court by the United States Postal Service (Postal Service).

28 ⁴The 2003 Supreme Court order became effective August 31, 2003. (Cal. Rules of Court,
rule 953(a).)

1 required respondent, inter alia, to make restitution of a \$2,000 fee to a former client at the rate of
2 \$250 per month. Respondent, however, failed to make any restitution payments. Therefore, the
3 State Bar filed a motion to revoke respondent's probation under the 2003 Supreme Court order,
4 which the State Bar Court granted in an order filed on June 9, 2004, in State Bar Court case number
5 04-PM-12035.⁵ Thereafter, the Supreme Court accepted the recommendations that the State Bar
6 Court made in that order. In the order the Supreme Court filed on September 10, 2004, in case
7 number S115929 (2004 Supreme Court order),⁶ the Supreme Court revoked respondent's probation
8 under the 2003 order, lifted the stay of execution of the one-year suspension imposed in the 2003
9 order, and again placed respondent on one year's stayed suspension and three years' probation on the
10 same conditions imposed on him under the 2003 order together with the added condition that
11 respondent be actually suspended for thirty days.

12 The Clerk of the Supreme Court properly served a copy of the 2004 Supreme Court order on
13 respondent at his official address in accordance with California Rules of Court, rule 29.4(a). (Evid.
14 Code, § 664; *In re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Thereafter, on October 5, 2004, the
15 State Bar mailed a letter to respondent at his official address reminding respondent of the probation
16 conditions imposed on him under the 2004 Supreme Court order. That letter was not returned
17 (undelivered or otherwise) to the State Bar by the Postal Service.

18 The probation conditions imposed on respondent under the 2004 Supreme Court order
19 required respondent, inter alia, to again make restitution of the \$2,000 fee to the former client at the
20 rate of \$250 per month; to submit written quarterly probation reports to the State Bar on each January
21 10, April 10, July 10, and October 10 during the probation period; and to submit, no later than
22 October 10, 2005, proof that he attended and successfully completed Ethics School. However,
23 respondent failed to submit, to the State Bar, proof of restitution payments. In addition, respondent
24 failed to submit, to the State Bar, the quarterly probation reports that were due January 10, April 10,

25
26 ⁵The State Bar Court's June 9, 2004, order was later modified by an order filed on June
27 30, 2004.

28 ⁶The 2004 Supreme Court order became effective on October 10, 2004. (Cal. Rules of
Court, rule 953(a).)

1 and July 10, 2005.

2 On June 16, 2005, the State Bar mailed another letter to respondent at his official address
3 reminding him again of the conditions of his probation.⁷ And that letter was not returned
4 (undelivered or otherwise) to the State Bar by the Postal Service. However, respondent still failed
5 to submit proof of restitution payments and to submit the past due quarterly reports. Accordingly,
6 on September 20, 2005, the State Bar filed a motion to revoke probation imposed on respondent
7 under the 2004 Supreme Court order, which is the motion now pending before this court. On
8 November 7, 2005, the court took the present motion to revoke probation under submission for
9 decision without a hearing.

10 III. CONCLUSIONS OF LAW

11 Bad faith is not a requirement for a finding of culpability in a probation violation matter;
12 “instead, a ‘general purpose or willingness’ to commit an act or permit an omission is sufficient.
13 [Citations.]” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)
14 Thus, the court concludes that the State Bar has established by a preponderance of the evidence that,
15 as alleged, respondent wilfully violated the probation conditions imposed on him under the 2004
16 Supreme Court order (1) by failing to submit proof of restitution payments and (2) by failing to
17 submit the quarterly probation reports that were due January 10, April 10, and July 10, 2005.

18 The court, however, cannot conclude that respondent violated the probation conditions
19 imposed under the 2004 Supreme Court order by failing to “submit proof of completion of Ethics
20 School due August 31, 2004,” as the State Bar alleges in the present motion to revoke. As noted
21 *ante*, under the 2004 Supreme Court order, respondent had until October 10, 2005, to provide the
22 State Bar with proof that he completed Ethics School.⁸

23
24 ⁷In addition, on July 12, 2005, the State Bar telephoned respondent at his latest telephone
25 number shown on the official membership records of the State Bar. However, that telephone
26 number was no longer in service.

27 ⁸Under the conditions of the probation imposed on respondent under the 2003 Supreme
28 Court order, respondent was required to submit proof of his completion of Ethics School no later
than August 31, 2004. But respondent’s probation under the 2003 Supreme Court order was
expressly revoked by the 2004 Supreme Court order. Accordingly, respondent’s failure to submit

1 **IV. AGGRAVATING CIRCUMSTANCES**

2 In aggravation, respondent has three prior records of discipline. (Rule Proc. of State Bar, tit.
3 IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁹

4 Respondent's first prior record of discipline is the 2003 Supreme Court order in which
5 respondent was placed on one year's stayed suspension and three years' probation on conditions.
6 That discipline, including the conditions of probation, was imposed in accordance with a stipulation
7 as to facts, conclusions of law, and disposition which respondent entered into with the State Bar and
8 that was approved by the State Bar Court in an order filed on March 20, 2003, in its case numbers
9 99-O-10794 and 02-O-15245 (consolidated).

10 According to that stipulation, respondent failed to competently perform legal services in a
11 single client matter (Rules Prof. Conduct, rule 3-110(A)) and to comply with the terms of an
12 agreement in lieu of discipline that he entered into with the State Bar in May 2001 (§ 6068, subd. (l)).
13 In aggravation, respondent demonstrated indifference towards rectification of the consequences of
14 his misconduct. In mitigation, respondent had no prior record of discipline in 14 years of practice
15 and suffered from severe financial stress.

16 Respondent's second prior record of discipline is the 2004 Supreme Court order in which
17 respondent's probation under the 2003 Supreme Court order was revoked and in which respondent
18 was again placed on one year's stayed suspension and three years' probation on conditions, including
19 thirty days' actual suspension. That discipline was imposed because, as noted *ante*, respondent
20 violated the probation condition requiring him to make monthly restitution payments of \$250.

21 Respondent's third prior record of discipline is the order that the Supreme Court filed in case
22 number S134619 (State Bar Court case number 04-O-12057-JMR) on August 23, 2005 (2005
23 Supreme Court order). In that order, the Supreme Court placed respondent on one year's stayed
24

25 _____
26 proof of his completion of Ethics School before or on August 31, 2004, cannot be charged in a
27 probation revocation proceeding. It can be charged only in an original disciplinary proceeding
(e.g., as a violation of the duty, under section 6068, subdivision (k), to comply with disciplinary
probation conditions).

28 ⁹All further references to standards are to this source.

1 suspension and two years' probation on conditions, including ninety days' actual suspension. That
2 discipline was imposed in accordance with a stipulation as to facts, conclusions of law, and
3 disposition which respondent entered into with the State Bar and that this court approved in an order
4 filed on April 15, 2005, in case number 04-O-12057-JMR. According to that stipulation, on five
5 occasions between mid-September 2003 and early August 2004 when he was on involuntary inactive
6 enrollment for not complying with his minimum continuing legal education requirements and when
7 he was on actual suspension for not paying his annual State Bar membership fees, respondent
8 engaged in the unauthorized practice of law in violation of sections 6125 and 6126, subdivision (b),
9 and thereby failed to support the laws of this state. In aggravation, respondent had two prior records
10 of discipline, and respondent was on disciplinary probation under the 2003 Supreme Court order at
11 the time he engaged in the unauthorized practice of law. In mitigation, respondent suffered extreme
12 emotional difficulties.¹⁰

13 Respondent engaged multiple acts of misconduct (i.e., multiple probation violations). (Std.
14 1.2(b)(ii).)

15 Respondent significantly harmed the administration of justice because his failure to comply
16 with the reporting condition of his probation made it more much difficult for the State Bar to
17 appropriately monitor him in seeking to insure the protection of the public and the courts. (Std.
18 1.2(b)(iv).)

19 Respondent's failure to comply with his probation conditions after the State Bar sent him a
20 reminder letter in June 2005 demonstrates an indifference toward rectification of or atonement for
21

22 ¹⁰The State Bar has the burden of proving all aggravating circumstances, including prior
23 records of discipline, by clear and convincing evidence. (Std. 1.2(b); *Van Sloten v. State Bar*
24 (1989) 48 Cal.3d 921, 932-933.) However, the State Bar did not refer to respondent's third prior
25 record of discipline in the present motion to revoke probation. Nor did the State Bar proffer, to
26 the court, copies of the relevant Supreme Court and State Bar Court orders and decisions that
27 establish respondent's third prior record. Nevertheless, this court sua sponte notes respondent's
28 third prior record and takes judicial notice (1) of the parties' stipulation in case number
04-O-12057-JMR and this court's April 15, 2005, order approving the stipulation and (2) of the
2005 Supreme Court order. (Evid. Code, § 452, subd. (d); cf. rule 306(b).) Of course, the
preferred practice is for the State Bar to fulfill its evidentiary obligations to establish a
respondent's prior record of discipline.

1 the consequences of his misconduct. (Std. 1.2(b)(v).)

2 V. MITIGATING CIRCUMSTANCES

3 No mitigating evidence was proffered on respondent's behalf, and none can be gleaned from
4 the record.

5 VI. DISCUSSION

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

13 Section 6093 authorizes the revocation of probation for a violation of a probation condition,
14 and standard 1.7(a) requires that the court recommend greater discipline in this matter than that
15 imposed in respondent's prior records of discipline.¹¹ However, the period of actual suspension
16 recommended in the present case cannot exceed the entire period of stayed suspension. (Rule 562.)
17 The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation
18 violation and on respondent's recognition of his misconduct and his efforts to comply with the
19 conditions. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

20 The State Bar requests that the probation imposed on respondent in the 2004 Supreme Court
21 order be revoked, that the stay of execution of the suspension previously imposed be lifted, that
22 respondent be actually suspended for one year, which is the greatest level of discipline that the court
23 may recommend (rule 562), and that respondent be involuntarily enrolled as inactive member of the
24 State Bar. The court agrees.

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26
27 ¹¹Even though standard 1.7(b) provides for disbarment when an attorney has two or more
28 prior records of discipline unless the most compelling mitigating circumstances predominate,
standard 1.7(b) does not apply in probation revocation proceedings. (*In the Matter of Carr*
(Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244, 257, fn. 13.)

1 practice of law for one year with credit given for the period of time he is involuntarily enrolled as
2 an inactive member of the State Bar under the order of inactive enrollment *post* (§ 6007, subd. (3))
3 and on the same conditions of probation that were originally imposed on him in the Supreme Court's
4 August 1, 2003, order in case number S115929 (State Bar Court case numbers 99-O-10794 and
5 02-O-15245 (consolidated)).

6 **VIII. RULE 955 & COSTS**

7 The court further recommends that respondent be ordered to comply with the provisions of
8 California Rules of Court, rule 955 and to perform the acts specified in subdivisions (a) and (c) of
9 that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court
10 order in this matter.

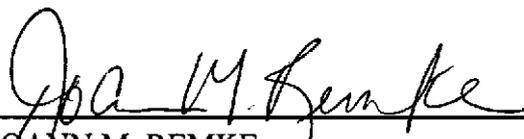
11 Finally, the court recommends that the costs incurred in this matter be awarded to the State
12 Bar in accordance with section 6086.10 and that such costs be payable in accordance with section
13 6140.7.

14 **IX. ORDER OF INACTIVE ENROLLMENT**

15 The requirements for inactive enrollment under section 6007, subdivision (d)(1) have been
16 met: respondent is subject to a stayed suspension, and this court has found that he violated the
17 conditions of his probation and is recommending that he be actually suspended from the practice of
18 law because of those violations. Therefore, it is ordered that respondent be involuntarily enrolled
19 as an inactive member of the State Bar of California under section 6007, subdivision (d)(1), effective
20 three days after service of this order (rule 564).

21 It is further ordered that respondent's involuntary inactive enrollment be terminated in
22 accordance with section 6007, subdivision (d)(2).

23
24
25 Dated: December 6, 2005

26 
27 JOANN M. REMKE
28 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 San Francisco, on December 6, 2005, 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:

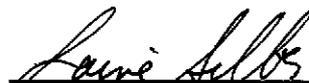
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DENNIS VANCE MILNER
P O BOX 2933
DUBLIN CA 94568

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

TERRIE GOLDADE, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 6, 2005.**



Laine Silber
Case Administrator
State Bar Court