

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 06-PM-10772 - RAH
GARY M. WALTERS,)	DECISION AND ORDER OF
Member No. 134769,)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT

The State Bar's Office of Probation, represented by Supervising Attorney Terry Goldade, filed a motion to revoke the probation imposed upon respondent Gary M. Walters by the Supreme Court in case number S128025 (State Bar case nos. 03-O-04643 et seq.). (See Bus. & Prof. Code, § 6093 subds. (b) and (c) and Rules Proc. of State Bar, rules 560, et seq.¹) The Office of Probation also seeks to have respondent enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (d). Respondent did not participate in this proceeding.

For the reasons stated below, the Court finds by a preponderance of the evidence that respondent wilfully failed to comply with the terms and conditions his probation as alleged by the Office of Probation, and that the requirements for inactive enrollment under section 6007, subdivision (d)(1) have been met. In view of the misconduct and the record as a whole, the Court recommends that respondent's probation be revoked and that the full one-year stayed suspension be imposed. Further, the Court orders that respondent be enrolled as an inactive member of the State Bar.

¹ All further references to sections are to this Code and all further references to rules are to these Rules.

FINDINGS OF FACT

Respondent was admitted to the practice of law in the State of California in June 1988 and has been a member of the State Bar since then.

By order filed December 3, 2004, and effective January 2, 2005, the Supreme Court suspended respondent for one year, stayed execution of that suspension, and placed him on probation for two years on certain conditions. The probation conditions included the requirements that respondent (1) submit quarterly reports attesting under penalty of perjury that he had complied with the California Rules of Professional Conduct and the State Bar Act; (2) attend the State Bar's Ethics School and provide proof to the Office of Probation within one year from the effective date of the Supreme Court order that he had attended and passed the test at the end of the course; and (3) attend the State Bar's Client Trust Account School and provide proof to the Office of Probation within one year from the effective date of the Supreme Court order that he had attended and passed the test at the end of the course.

The Office of Probation sent respondent a letter dated December 13, 2004, outlining the terms and conditions of the probation. The letter was addressed to respondent's membership records address and was not returned as undeliverable.

On or about April 29, 2005, a probation deputy left a voice mail message for respondent reminding him to submit his quarterly report which was due April 10, 2005. On or about May 9, 2005, respondent left the probation deputy a voice mail message regarding the April 2005 report. On or about May 10, 2005, the probation deputy spoke with respondent. Respondent requested that the probation deputy fax him a blank form for his April 2005 quarterly report. The probation deputy did so. Respondent submitted his April 2005 quarterly report on May 10, 2005.

On or about August 30, 2005, the probation deputy left a voice mail message for respondent reminding him to submit his July 2005 quarterly report. On or about September 15, 2005, respondent left the probation deputy a voice mail message requesting that the deputy again fax him a blank form for his quarterly report. The probation deputy did so and also called

respondent and left him a voice mail message reminding him that an original signature was required for the submission of his quarterly reports. On or about December 15, 2005, the probation deputy left a voice mail message for respondent reminding him to submit his July 2005 and October 2005 quarterly reports. The probation deputy also mailed a letter to respondent dated December 15, 2005, reminding respondent to submit his July and October 2005 reports.

On or about December 28, 2005, the probation deputy left a voice mail message for respondent reminding him that his July and October 2005 quarterly reports could not be filed without original signatures. On or about December 29, 2005, the probation deputy spoke with respondent and told him to submit his quarterly reports with original signatures.

On or about February 1, 2006, the probation deputy left a voice mail message for respondent informing him that he had not complied with the conditions of his probation and requesting that he return the call. On or about February 6, 2006, the probation deputy left a voice mail message for respondent informing him that his October 2005 quarterly report could not be filed because no box had been checked indicating the period for which the report had been submitted. On or about February 15, 2006, the probation deputy spoke with respondent and advised him again that his October 2005 quarterly report could not be filed because no box had been checked indicating the period for which it had been submitted. Respondent indicated that he would call the probation deputy back latter. As of February 2006, respondent had not done so.

The quarterly report due April 10, 2005, was filed late on May 10, 2005. The quarterly report due July 10, 2005, was received late on December 28, 2005, but was not filed because it did not have an original signature. The July 10, 2005, report was not filed until February 3, 2006. The quarterly report due October 10, 2005, was received late on December 28, 2005, but was not filed because it did not have original of signature. The October 10, 2005, report was received again on February 3, 2006, but was not filed because no box was checked indicating the quarterly period for which it was being submitted. The October 10, 2005, report was not filed. The quarterly report due January 10, 2006, was filed on February 3, 2006.

As of February 2006, the Office of Probation had not received proof that respondent attended the State Bar's Ethics School or the Client Trust Account School and passed the test given at the end of the courses.

CONCLUSIONS OF LAW

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. (Citations.)" (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

Pursuant to sections 6093(b) and (c) and rule 561, the Court concludes that the State Bar proved by a preponderance of the evidence that respondent wilfully violated the conditions of his probation by (1) failing to file timely the quarterly reports that were due April and July 2005, and January 2006, and failing to file the report that was due October 2005; (2) failing to attend the State Bar's Ethics School and provide proof to the Office of Probation within one year from the effective date of the Supreme Court order that he had attended and passed the test; and (3) failing to attend the State Bar's Client Trust Account School and provide proof to the Office of Probation within one year from the effective date of the Supreme Court order that he had attended and passed the test.

MITIGATING AND AGGRAVATING CIRCUMSTANCES

No mitigating evidence was offered or is apparent from the record. In aggravation, respondent has a record of prior discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i) (hereafter "Standard(s)").) As noted above, the discipline underlying this probation revocation proceeding was imposed by the Supreme Court by order filed December 3, 2004. In this underlying case, respondent stipulated that he deposited his personal funds in his client trust account and paid his personal and business debts from the trust account; and that he practiced law while he was suspended from the practice of law for failing to pay his membership fees. No mitigating circumstances were found in this prior case. In aggravation, respondent stipulated that his misconduct involved multiple acts of misconduct.

The following additional aggravating circumstances are found in this probation revocation matter: Respondent engaged in multiple acts of misconduct by failing to comply with multiple conditions of probation. (Std. 1.2(b)(ii).) Respondent significantly harmed the administration of justice as his failure to comply with the conditions of his probation made it more difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).) Respondent's failure to comply with the probation conditions after being reminded by the Office of Probation demonstrates indifference toward rectification of, or atonement for, the consequences of his misconduct. (Std. 1.2(b)(v).)

DISCUSSION

The State Bar requests that respondent's probation be revoked, that the stay of execution of the suspension previously imposed be lifted, and that respondent be actually suspended for the full period of the stayed suspension. The Court concludes that this discipline is warranted.

Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.)

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. However, the period of actual suspension recommended in the instant case cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rule 562.)

Respondent failed to comply with the quarterly reporting condition of his probation. "At a minimum, quarterly probation reporting is an important step towards an attorney probationer's rehabilitation because it requires the attorney, four times a year, to review and reflect upon his professional conduct in light of the minimum professional standards that are set forth in the Rules of Professional Conduct and the State Bar Act." (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.) In addition, respondent failed to take the State Bar's

Ethics and Client Trust Account courses. These courses would have provided respondent learning in his ethical obligations as an attorney, which would also have been important steps toward his rehabilitation. Respondent's failure to comply with these conditions coupled with his failure to participate in this proceeding raise serious concerns about his lack of insight and are a strong indicator that the risk of future misconduct is great.

The prior disciplinary order "provided [respondent] an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in [the matter] presently under consideration sadly indicates either his unwillingness or inability to do so." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) A lengthy period of actual suspension will allow time for introspection. Based on the above, the Court concludes that the imposition of the full stayed suspension is warranted.

DISCIPLINE RECOMMENDATION

The Court recommends that the probation imposed by the Supreme Court in case number S128025 (State Bar case nos. 03-O-04643 et seq.) be revoked, that the previous stay of execution of the suspension be lifted, and that respondent Gary M. Walters be actually suspended from the practice of law for one year.

It is also recommended that respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) of this rule within 40 days of the effective date of the Supreme Court order in this matter.²

It is not recommended that respondent again be ordered to take and pass the Multistate Professional Responsibility Examination as he was ordered to do so in Supreme Court case number S128025 (State Bar case no. 03-O-04643 et seq.).

²Respondent 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.)

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment

INACTIVE ENROLLMENT ORDER

Respondent was subject to a stayed suspension, has been found to have violated his probation conditions, and a period of actual suspension due to said violations has been recommended. Accordingly, the requirements for respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (d)(1) have been met.

It is therefore ordered that respondent Gary M. Walters, member number 134769, be enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 60007, subdivision (d), effective three days after service of this order.

Dated: April ____, 2006

RICHARD A. HONN
Judge of the State Bar Court