

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

In the Matter of)	Case No. 06-PM-13386-RAP
JAMES M. SIMMONS,)	
Member No. 159726,)	ORDER GRANTING MOTION TO
A Member of the State Bar.)	REVOKE PROBATION AND FOR
)	INVOLUNTARY INACTIVE
)	ENROLLMENT

I. Introduction

In this probation revocation proceeding, respondent **JAMES M. SIMMONS** is charged with violating his probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (Office of Probation) seeks to revoke his probation, to impose upon respondent the entire period of suspension previously stayed, and to involuntarily enroll respondent as an inactive member of the State Bar.

The court finds, by preponderance of the evidence, that respondent has violated his probation conditions and hereby grants the motion. The court recommends, among other things, that respondent's probation be revoked, that the previous stay of execution of the one-year suspension be lifted, and that respondent be actually suspended from the practice of law for one year.

II. Pertinent Procedural History

On July 19, 2006, the Office of Probation filed and properly served a motion to revoke probation on respondent, under rules 60 and 563(a) of the Rules of Procedure of the State Bar of California.¹ The motion was mailed to respondent's official membership records address (official address). Respondent did not file a response within 20 days of the service of motion, as required by

¹References to rules are to the Rules of Procedure of the State Bar.

rule 563(b)(1).

The court took this matter under submission on August 17, 2006.

III. Findings of Fact and Conclusions of Law

All factual allegations contained in the motion to revoke probation and supporting documents are deemed admitted upon respondent's failure to file a response. (Rules Proc. of State Bar, rule 563(b)(3).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on August 24, 1992, and has since been a member of the State Bar of California.

B. Probation Conditions in Supreme Court Case No. S128152

On December 14, 2004, in Supreme Court case No. S128152 (SCO), the California Supreme Court ordered that:

1. Respondent be suspended from the practice of law for one year, that execution of the suspension be stayed;
2. Respondent be placed on probation for two years, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed on August 24, 2004 (State Bar case Nos. 03-O-03685);
3. Respondent comply with certain probation conditions, including, but not limited to:
 - a. Submitting quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation; and
 - b. Attending the State Bar Ethics School and passing the test given at the end of the session within one year from the effective date of discipline, and providing proof of compliance.

Notice of the SCO was properly served upon respondent in the manner prescribed by rule 24(a) of the California Rules of Court at respondent's official address in accordance with Business and Professions Code section 6002.1.²

²References to sections are to the Business and Professions Code.

C. Probation Violations

On March 22, 2005, the Office of Probation sent a letter to respondent, at his official address, reminding him of the probation conditions.

On June 15, 2005, the Office of Probation sent another letter to respondent, again reminding him of the probation conditions. The letter also advised him that the Office of Probation had not received his first quarterly report. The March 22 and June 15, 2005 letters were not returned as undeliverable.

On August 17, 2005, the Office of Probation telephoned respondent because he had submitted one quarterly report to cover both the April 10 and July 10, 2005 quarterly reports. He stated that he would send separate reports the next day. On August 19, 2005, respondent faxed his reports to the Office of Probation. On August 30, 2005, the Office of Probation again telephoned respondent because respondent had not provided the originals of his April and July quarterly reports. Respondent thereafter provided the original reports.

On June 2, 2006, the Office of Probation tried to telephone respondent at his official membership records telephone number, but the number was no longer in service. Additionally, on that same date, the Office of Probation wrote to respondent and advised him that it had not received his quarterly reports due on January 10 and April 10, 2006, nor the proof that respondent had attended Ethics School, which was due by January 13, 2006.

Based on the evidence submitted by the Office of Probation, respondent failed to do the following:

1. Submit the quarterly reports due on January 10, April 10, and July 10, 2006, and timely file the reports due on April 10, July 10, and October 10, 2005; and
2. Provide proof by January 13, 2006, of his successful completion of a session of the Ethics School.

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

Section 6093, subdivision (b), provides that violation of a probation condition constitutes

cause for revocation of any probation then pending, and may constitute cause for discipline. Section 6093, subdivision (c), provides that the standard of proof is the preponderance of the evidence.

Therefore, the State Bar has demonstrated by a preponderance of the evidence that respondent wilfully violated the probation conditions ordered by the Supreme Court in its December 14, 2004 order. Respondent failed to submit quarterly reports to the Office of Probation that were due on January 10, April 10, and July 10, 2006; failed to timely file the quarterly reports due on April 10, July 10, and October 10, 2005; and failed to submit proof by January 13, 2006, of his successful completion of a session of Ethics School.

As a result, the revocation of respondent's probation in California Supreme Court case No. S128152 is warranted.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Since respondent did not file a response to the probation revocation motion, no evidence in mitigation was presented and none is apparent from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Attorney Sanctions for Prof. Misconduct, std. 1.2(e).)³

B. Aggravation

In aggravation, respondent has a prior record of discipline. (Std. 1.2(b)(i).) On December 14, 2004, in the underlying matter, respondent, upon stipulation, was ordered suspended for one year, stayed, and placed on probation for two years for the unauthorized practice of law in one client matter, resulting in violations of sections 6068, subdivision (a), 6125 and 6126.

Respondent's failure to fully participate in this proceeding is also an aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

Public protection and attorney rehabilitation are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.)

“[T]here has been a wide range of discipline imposed for probation violations from merely

³All further references to standards are to this source.

extending probation. . .to a revocation of the full amount of the stayed suspension and imposition of the amount as an actual suspension.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

In determining the level of discipline to be imposed, the court must consider the “total length of stayed suspension which could be imposed as an actual suspension and the total amount of actual suspension earlier imposed as a condition of the discipline at the time probation was granted.” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) The extent of the discipline to be recommended is dependent, in part, on the nature of the probation violation and its relationship to respondent’s prior misconduct. (*Ibid.*)

Here, respondent’s prior misconduct involved a failure to support and uphold the law by practicing law when he was not entitled to do so. In the instant matter, the primary probation violation found was his failure to comply with the rehabilitation conditions. Respondent failed to file several quarterly reports; other quarterly reports were untimely filed. Respondent also failed to submit proof of his successful completion of a session of Ethics School.

“[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards the attorney’s rehabilitation.” ((*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.) Thus, respondent’s failure to file quarterly reports warrants significant discipline.

In consideration of respondent’s violation of probation conditions and his lack of participation in these proceedings and continuing noncompliance with probation conditions despite the Office of Probation’s efforts to secure it, the court does not believe it worthwhile to recommend again placing him on probation subject to conditions.

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.)

Hence the court finds good cause to GRANT the motion to revoke respondent's probation and recommends that the entire period of his stayed suspension be imposed.

VI. Recommended Discipline

Accordingly, the court recommends as follows:

1. That the probation of respondent **James M. Simmons** previously ordered in Supreme Court case No. S128152 (State Bar case No. 03-O-03685 be revoked;
2. That the previous stay of execution be lifted; and
3. That respondent be actually suspended from the practice of law for one year.

It is also recommended that the Supreme Court order respondent to comply with rule 955, paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination as he was previously ordered to do so in S128152.

VII. Costs

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VIII. Order of Involuntary Inactive Enrollment

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).⁴ The inactive enrollment order will be effective three calendar days after the date upon which this Order is served.

Dated: September 12, 2006

RICHARD A. PLATEL
Judge of the State Bar Court

⁴Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)