

# PUBLIC MATTER

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STATE BAR COURT  
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LOS ANGELES

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

In the Matter of	)	Case No. 18-PM-10810-DFM
DENNIS EARL BRAUN,	)	ORDER GRANTING MOTION TO
A Member of the State Bar, No. 152816.	)	REVOKE PROBATION AND ORDER
	)	OF INACTIVE ENROLLMENT

### INTRODUCTION

On January 30, 2018, the Office of Probation of the State Bar of California (Office of Probation) filed a motion to revoke the disciplinary probation of respondent Dennis Earl Braun<sup>1</sup> (Respondent). Even though Respondent was properly served with the motion to revoke his probation by mail sent to his State Bar official membership records address by certified mail, return receipt requested<sup>2</sup> and by regular mail, he did not participate in this proceeding. On March 12, 2018, this court issued an order submitting the motion for decision, serving Respondent with a copy of that order. Good cause having been shown, the motion to revoke Respondent's probation is granted and discipline is recommended as set forth below.

<sup>1</sup> Respondent was admitted to the practice of law in California on June 6, 1991, and has been a member of the State Bar of California since that time. As discussed below, Respondent has two prior records of discipline.

<sup>2</sup> Bus. & Prof. Code, § 6002.1, subd. (c); Rules Proc. of State Bar, rules 5.25, 5.314(A); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108 [service in a State Bar Court proceeding is complete upon mailing].

### FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>3</sup>

On October 19, 2016, the California Supreme Court filed an order in State Bar Court case No. 14-O-06193 (Order No. S236449), suspending Respondent for one year, stayed; placing him on probation for two years; and ordering him to comply, *inter alia*, with the following conditions of probation:

(a) Within 30 days of the effective date of the order, contact the Office of Probation to schedule a meeting with his assigned probation deputy;

(b) Submit a written quarterly report to the Office of Probation on or before January 10, April 10, July 10 and October 10 of each year, or part thereof, during which the probation is in effect, stating under penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report); and

(c) Within one (1) year of the effective date of the discipline, provide to the Office of Probation satisfactory proof of his attendance at a session of the State Bar Ethics School and passage of the test given at the end of such session.

The order was properly served on Respondent<sup>4</sup> and became effective November 18, 2016.

On November 17, 2016, the Office of Probation uploaded a reminder letter to Respondent's private member profile on the State Bar's website, outlining the terms and conditions of his probation. On that same date, the Office of Probation sent an email to Respondent, notifying him of the uploaded letter.

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<sup>3</sup> Because Respondent failed to file a response to the motion to revoke probation, the factual allegations in the motion and its supporting documents are treated as admissions. (Rules Proc. of State Bar, rule 5.314(C).) The court admits into evidence the declaration of Respondent's assigned probation deputy, which is set forth on pages 7 through 11 of the motion, and the exhibits attached to the present motion. (Rules Proc. of State Bar, rule 5.314(H).)

<sup>4</sup> In the absence of evidence to the contrary, the court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to Respondent immediately after its filing. (Cal. Rules of Court, rule 8.532(a); Evid. Code, § 664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

Despite these efforts to make Respondent aware of the conditions of his probation and to secure his compliance with them, Respondent did not comply with the following probation conditions:

(a) Respondent did not contact the Office of Probation to schedule a meeting with his assigned probation deputy within 30 days of the effective date of his discipline, i.e., on or before December 18, 2016. Respondent did not contact the Office of Probation to schedule this meeting until February 15, 2017, nearly two months after the deadline for doing so. Further, this contact came only after the Office of Probation has sent Respondent an email on February 14, 2017, informing him of his non-compliance with the conditions of his probation.

(b) Respondent filed the quarterly report due January 10, 2017, on February 21, 2017 - over a month late. Here again, this report was only filed after Respondent had received the Office of Probation's February 14, 2017 email.

(c) Respondent did not file the quarterly report due January 10, 2018.

(d) Respondent has failed to attend and present proof of passage of the State Bar Ethics School, notwithstanding the one-year deadline for him to do so.

### **Aggravation**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

### **Prior Discipline**

As set forth in greater detail below, Respondent has two prior records of discipline. This is a significant factor in aggravation. (Std. 1.5(a).)

State Bar Court case No. 14-O-06193

As noted above, in its order of October 19, 2016, the Supreme Court suspended Respondent for one year, stayed, and placed him on probation for two years. (Supreme Court Order No. S236449; State Bar Court case No. 14-O-06193.) Respondent's misconduct involved violations of rules 3-110(A) (failure to perform with competence) and 3-700(A)(2) (improper withdrawal from employment) of the Rules of Professional Conduct, and section 6068, subdivision (m) (failure to inform client of significant development), of the Business and Professions Code.

State Bar Court case No. 01-O-03607

In 2003, Respondent was privately reprovved. In that matter, he stipulated that he had violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform legal services with competence by not taking the appropriate steps to distribute funds held in trust.

**Multiple Acts of Misconduct**

Respondent's violations of the terms of his disciplinary probation constitute multiple acts of misconduct, which is a substantial aggravating circumstance. (Std. 1.5(b).)

**Lack of Participate in Disciplinary Proceeding**

Respondent's failure to participate in this disciplinary proceeding is also a significant aggravating factor because it reflects an ongoing lack of commitment to comply with ethical requirements. (Std. 1.5(l).) Respondent's failure to appear and participate in this proceeding establishes that Respondent fails both to appreciate the seriousness of the charges against him and to comprehend the importance of fulfilling his duty as an attorney to participate in disciplinary proceedings.

## **Mitigation**

It was Respondent's burden to establish mitigating factors. (Std. 1.6.) No mitigating factors were shown by the evidence presented to this court.

## **DISCUSSION**

Section 6093 authorizes the revocation of probation for a violation of a probation condition. Standard 2.14 provides:

Actual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders.

In turn, standard 1.8 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding.

In determining the appropriate level of discipline in a probation revocation proceeding, the court considers the "total length of stayed suspension which could be imposed as an actual suspension . . . ." (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) The court also considers the seriousness of the probation violations and the attorney's efforts, if any, to comply with the conditions of probation. (*Ibid.*)

Respondent's failures to attend the State Bar Ethics School and to participate in this disciplinary proceeding evidence his ongoing inability and/or unwillingness, despite two prior disciplines, to comply with his professional obligations. The Office of Probation recommends that the entire one-year period of stayed suspension be imposed on Respondent as a result of his violations of the conditions of his probation. This court agrees with that recommendation.

(Rules Proc. of State Bar, rule 5.312; *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540; *In the Matter of Tiernan, supra*, 3 Cal. State Bar Ct. Rptr. at p. 531.) In addition, this court recommends that Respondent again be placed on two years' probation and be ordered to comply with the conditions of probation set forth below.

## **RECOMMENDATIONS**

### **Probation Revocation/Actual Suspension/Probation**

The court recommends that the probation imposed on respondent Dennis Earl Braun, State Bar No. 152816, in the Supreme Court's order of October 19, 2016, in case No. S236449 (State Bar Court case No. 14-O-06193) be revoked; that the previous stay of execution of the one-year suspension be lifted and that Respondent be actually suspended for one year; and that Respondent be placed on probation for a period of two years subject to the following conditions:

1. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
2. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation case specialist (formerly "probation deputy") to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation case specialist either in person or by telephone. During the period of probation, he must promptly meet with the probation case specialist as directed and upon request.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the State Bar's Attorney Regulation and Consumer Resources Office (formerly the "Membership Records Office") and the State Bar Office of Probation.
4. He must submit written quarterly reports to the Office of Probation on or before each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
6. Within six months after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of his completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE)

requirement, and Respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

Respondent's new two-year period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

### **Multistate Professional Responsibility Examination**

It is not recommended that Respondent again be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) during the period of his suspension as he was previously ordered to do so in the Supreme Court's order of October 19, 2016, and he remains obligated to comply with this requirement.

### **California Rules of Court, Rule 9.20**

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

### **Costs**

Finally, the court recommends 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.

### **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

Respondent Dennis Earl Braun, State Bar No. 152816, is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).<sup>5</sup> This

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<sup>5</sup> Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

inactive enrollment order will be effective three calendar days after the date on which this order is served.

Dated: April 3, 2018



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DONALD F. MILES  
Judge of the State Bar Court



**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 April 3, 2018, I deposited a true copy of the following document(s):

**ORDER GRANTING MOTION TO REVOKE PROBATION AND ORDER OF 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 Los Angeles, California, addressed as follows:

DENNIS E. BRAUN  
3415 S SEPULVEDA BLVD  
STE 630  
LOS ANGELES, CA 90034

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

TERRIE L. GOLDADE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 3, 2018.



Marc Krause  
Court Specialist  
State Bar Court