

**PUBLIC MATTER**

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

**FILED**

*48*  
**FEB -7 2019**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of	)	Case No. 18-PM-17178-CV
	)	
FRANKLIN SAMUEL ADLER,	)	ORDER RE MOTION TO REVOKE
	)	PROBATION
A Member of the State Bar, No. 56417.	)	
_____	)	

**Introduction**<sup>1</sup>

In this probation revocation proceeding, respondent Franklin Samuel Adler (Respondent) is charged with violating certain probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (Office of Probation) seeks to: (1) revoke Respondent's probation; (2) impose upon Respondent the entire period of suspension previously stayed; (3) require Respondent to comply with California Rules of Court, rule 9.20; and (4) involuntarily enroll Respondent as an inactive member of the State Bar pursuant to section 6007, subdivision (d).

The court finds, by a preponderance of the evidence, that Respondent has violated certain probation conditions and hereby grants, in part, the Office of Probation's Motion to Revoke Probation (motion). The court recommends, among other things, that Respondent's probation be revoked; that the previously stayed, one-year suspension be lifted; that Respondent be suspended

<sup>1</sup> Unless otherwise indicated, all statutory references are to the Business and Professions Code. All references to standard(s) or std. are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

from the practice of law for one year; that execution of that suspension be stayed; and Respondent will be placed on probation for one year subject to conditions, including that he be actually suspended for six months.

### **Significant Procedural History**

On October 25, 2018, the Office of Probation filed and properly served a motion to revoke probation (Motion to Revoke) on Respondent by certified and regular mail.<sup>2</sup> Respondent filed a response to the motion on November 19, 2018. Respondent admitted in part, and denied in part, the allegations against him, and requested a hearing pursuant to Rules of Procedure of the State Bar, rule 5.314(E).

The hearing was held on January 10, 2018. At the conclusion of the hearing, the court took the matter under submission for decision.<sup>3</sup>

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 20, 1973, and has been a member of the State Bar at all times since.

### **Probation Violations**

On April 18, 2018, in Supreme Court case No. S246946 (State Bar Court case Nos. 16-O-17996 and 17-O-01719), the California Supreme Court ordered, among other things, that:

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<sup>2</sup> The certified copy of Respondent's address history from July 15, 1985 to October 15, 2018, included in exhibit one, attached to the Office of Probation's motion to revoke Respondent's probation, is not sufficient to establish that the motion was properly served on Respondent on October 25, 2018. Accordingly, the court takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h), which reflect that the motion was properly served on Respondent at his membership records address on October 25, 2018.

<sup>3</sup> On January 4, 2019, OCTC filed a request for judicial notice of the State Bar Court's docket sheet demonstrating that Respondent has not filed a request to resign. Respondent has not filed an opposition to OCTC's request. Pursuant to Evidence Code section 452, subdivision (d), OCTC's request is **GRANTED**.

1. Respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, and that he be placed on probation for one year subject to certain conditions, including a 30-day actual suspension, as recommended by the Hearing Department of the State Bar Court in its December 13, 2017, Order Approving “Stipulation Re Facts, Conclusions of Law and Disposition.”

2. Respondent comply with the following probation conditions:

A. Within 30 days after the effective date of his discipline, i.e., by June 18, 2018, Respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation. Respondent was also ordered to meet with the probation deputy either by telephone or in person, upon the direction of the Office of Probation.

B. Comply with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation. Respondent was required to report such compliance in writing, under penalty of perjury, to the Office of Probation each January 10, April 10, July 10, and October 10 of the period of probation (quarterly reports).

C. Provide his former client in the underlying disciplinary matter with an accounting of legal services rendered and refund the former client any unearned fees. And, provide satisfactory proof of compliance with this condition to the office of probation within 30 days after the effective date of discipline.

The Supreme Court order became effective on May 18, 2018, i.e., 30 days after it was filed. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.<sup>4</sup>

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<sup>4</sup> Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court order on Respondent, California Rules of Court, rule 8.532(a) required the Supreme Court clerk to promptly transmit a copy of the order to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of

On April 27, 2018, Respondent left a voice mail message for his assigned probation deputy requesting that the required meeting be scheduled. On May 3, 2018, the Office of Probation replied to Respondent's voice mail message by sending Respondent an email message asking Respondent to reply to the email to schedule the required meeting, and to inform Respondent that the Office of Probation would shortly be sending Respondent a courtesy reminder letter. On May 10, 2018, Respondent left another voice mail message asking for a return call to schedule the required meeting, and also mailed a letter to the Office of Probation requesting the same.

That same day, May 10, 2018, the Office of Probation uploaded to Respondent's attorney profile on the State Bar's website a reminder letter outlining certain terms and conditions of his probation and setting forth compliance deadlines. The letter specifically addressed Respondent's requirement to contact his probation deputy to schedule the required meeting and Respondent's requirement to provide proof of accounting to his former client. The letter also discussed Respondent's quarterly reporting requirement, including that his reports were due quarterly, beginning July 10, 2018. Accompanying the letter were the Supreme Court order imposing discipline; the portion of the "Stipulation Re Facts, Conclusions of Law and Disposition" setting forth the terms and conditions of probation; and a quarterly report form along with a quarterly report instruction sheet.

The Office of Probation sent an e-mail to Respondent on May 10, 2018, informing him to access his attorney profile on the State Bar's website to review, download, and print the reminder letter with informational attachments prepared for him by the Office of Probation. The delivery of the e-mail was completed.

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evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his or her duty and transmitted a copy of the Supreme Court order to Respondent immediately after its filing.

On May 17, 2018, the Office of Probation emailed Respondent with proposed dates for the required meeting, and Respondent was asked to reply to the email with the date and time that he selected.

On June 21, 2018, the Office of Probation sent Respondent a letter to his State Bar membership records address setting forth his noncompliance with the condition that he contact the Office of Probation and schedule a meeting with his probation deputy by the deadline.

On June 26, 2018, Respondent sent a letter, sent a fax, and left a voice mail message for the Office of Probation stating that he had only recently received the May 17, 2018 email, and again asked the assigned probation deputy to call him to schedule the required meeting.

On June 27, 2018, the Office of Probation again emailed Respondent the available dates and times for the required meeting and again asked Respondent to reply to the email about his meeting time selection.

On June 29, 2018, Respondent left yet another voice mail message. He stated that he had received the email and that the probation deputy should call him to schedule the required meeting. Respondent failed to schedule his required meeting with his probation deputy by the deadline, and he failed to meet with his probation deputy.

At the hearing on this matter, Respondent admitted culpability regarding the second allegation set forth in the motion. Specifically, Respondent admitted that he had not filed<sup>5</sup> his first two quarterly reports, which were due on July 10, 2018, and October 10, 2018, respectively. The two reports remain outstanding, and Respondent has not satisfied this condition.

As to the first allegation, that he did not schedule and did not hold the required meeting with the probation deputy, Respondent did not contest the allegation. Rather, he referred to the back-and-forth communications with the probation office as “telephone tag,” and argued that he

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<sup>5</sup> The probation condition did not specifically require the filing of quarterly reports but, rather, their submission. Nevertheless, Respondent did not timely submit the quarterly reports.

earnestly attempted to schedule and complete the required meeting. He contended that his conduct was not willful because he was responsive to the probation office and made repeated efforts to get the required meeting scheduled.

Finally, regarding the third allegation, Respondent provided the required accounting promptly, but explained that he did not provide proof of timely compliance with the accounting requirement because he placed that responsibility on his former client's current attorney.

### **Conclusions**

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. Bad faith is not a requirement for a finding of culpability in a probation violation matter. Instead, a general purpose of 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.)

Respondent did not comply with the probation conditions as ordered by the Supreme Court in case No. S246946. He failed to: (1) schedule his required meeting and failed to meet with his probation deputy; (2) timely submit his quarterly reports due July 10, 2018, and October 10, 2018; and (3) timely submit proof that he provided an accounting to his former client.

As a result, the revocation of Respondent's probation in California Supreme Court case No. S246946 is warranted.

### **Aggravation**

#### **Prior Record of Discipline (Std. 1.5(a))**

Respondent has one prior record of discipline. On April 18, 2018, the Supreme Court filed an order in case No. S246946 (State Bar Court case Nos. 16-O-17996 and 16-O-01719) (the underlying matter) suspending Respondent from practicing law in California for one year;

staying execution of that suspension; and placing Respondent on probation for one year subject to certain conditions, including that Respondent be suspended from practicing law for the first 30 days of his probation. In the underlying matter, Respondent stipulated that he failed to prepare certain documents, failed to render an appropriate accounting, accepted payment from a third party for representing a client without the client's written consent, and failed to respond to his client's reasonable inquiries. The conduct in this matter is related to the misconduct in the underlying matter; both demonstrate Respondent's inability to carry out his ethical duties. The court gives great weight to this aggravating circumstance.

**Multiple Acts of Wrongdoing (Std. 1.5(b).)**

Respondent committed multiple acts of wrongdoing, which include: (1) his failure to schedule a meeting with his probation deputy; (2) his failure to submit and file his first two quarterly reports; and (3) his failure to submit proof of an accounting to his former client to the probation office. However, the court assigns only modest weight to this aggravating factor, as the violations arose from failing to comply with a single Supreme Court order. (*In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, 355.)

**Indifference Toward Rectification/Atonement (Std. 1.5(k).)**

An attorney's continued failure to comply with his probation conditions after being notified of that non-compliance is properly considered a substantial aggravating circumstance. It demonstrates indifference toward rectification of or atonement for the consequences of one's misconduct. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) In the Office of Probation's June 21, 2018 letter, Respondent was notified of his noncompliance with the condition that he schedule a meeting with his probation deputy by June 18, 2018. In a subsequent August 9, 2018 letter, the Office of Probation notified Respondent that he failed to submit his quarterly report that was due June 10, 2018, and reminded him that a quarterly report

was due October 10, 2018. As of the filing date of the Motion to Revoke on October 25, 2018, Respondent had failed to comply with both conditions, and his January 10, 2019 quarterly report remains due. Even after the Office of Probation's repeated reminders, Respondent has failed to comply with his probation obligations.

Respondent also fails to appreciate the wrongfulness of his misconduct. In his response to the motion, he stated that the failure for a meeting to take place with his probation deputy was "partially his fault." Instead of offering an explanation regarding his failure to simply hit the reply button and select a meeting date by reply email as directed by the Office of Probation, Respondent questioned the probation officer's insistence that the meeting be scheduled by email rather than by telephone. His response demonstrates Respondent's lack of understanding that it was his duty alone to ensure compliance with his probation conditions.<sup>6</sup>

Respondent's indifference is a significant aggravating circumstance.

### **Mitigation**

It was Respondent's burden to establish mitigating factors. Respondent, however, did not present any evidence in mitigation and none is apparent from the record. (Std. 1.6.)

### **Discussion**

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.8(a) requires that the court recommend greater discipline in this matter than that imposed in the underlying disciplinary proceeding. However, any actual suspension cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rules

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<sup>6</sup> This court does not find credible that Respondent mistakenly believed that the Supreme Court discipline order was in effect earlier than the effective date. The Order Approving Stipulation Re Facts, Conclusions of Law and Disposition clearly states, "**The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the file date. (See rule 9.18(a), California Rules of Court.)**" (Emphasis in the original.) Moreover, the California Rules of Court provide that the Supreme Court discipline order becomes effective 30 days after filing. The stipulation containing notice of rule 9.18(a) were sent to Respondent.



Proc. of State Bar, rule 5.312.) The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and Respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

As of the filing of the motion seeking revocation of his probation, Respondent had not scheduled a meeting with his probation deputy. Respondent was provided with notice of the terms and conditions of his disciplinary probation, yet he failed to comply with them, despite repeated reminders from the Office of Probation. Respondent's failure to schedule and hold the required meeting with his probation deputy demonstrates Respondent's failure to understand or appreciate his professional obligations.

In addition, Respondent has failed to timely submit his first and second quarterly reports in which he is required to report, in writing and under penalty of perjury, his compliance with the State Bar Act, the Rules of Professional Conduct, and all the conditions 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 addition, it requires the attorney to review his conduct to ensure that he complies with all of the conditions of his disciplinary probation." (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.)

Absent compelling mitigating circumstances, an attorney who willfully violates a significant probation condition can anticipate that the expected discipline will be an actual suspension. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 574.) Furthermore, "the greatest amount of discipline would be merited for violations which show a breach of a condition of probation significantly related to the misconduct for which probation was given. This would be especially significant in circumstances raising a serious concern about

the need for public protection or showing the probationer's failure to undertake rehabilitative steps." (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

In the underlying disciplinary matter, Respondent's misconduct involved failure to render an appropriate accounting and failure to keep his former client reasonably informed of significant developments. The probation condition requiring Respondent to submit quarterly reports is a significant probation condition, and it is related to the misconduct for which probation was imposed. Submitting quarterly reports afforded Respondent the opportunity to demonstrate his ability to timely fulfill his ethical obligations, as opposed to Respondent's conduct in the underlying matter. (See *In the Matter of Wiener* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763 ["an attorney probationer's filing of quarterly probation reports is an important step toward rehabilitation"].) Respondent's failure to submit both his first and second quarterly reports raises concern about public protection and whether Respondent has made efforts towards rehabilitation. The court, therefore, finds that a significant period of actual suspension is warranted in this matter.

The Office of Probation requested that Respondent's probation be revoked and that one year of actual suspension be recommended as the discipline in this matter. Although the court finds that a significant period of actual suspension is warranted in this matter, the court notes that, as of the hearing in this matter, Respondent repeatedly communicated with the Office of Probation; made efforts to schedule the required meeting; and timely provided an accounting to his client, although he wrongly placed responsibility on the client's subsequent attorney to provide proof of that accounting. Nevertheless, Respondent has demonstrated to the court that he is amenable to probation, and that the full period of stayed suspension in the underlying matter is not warranted.

When an attorney on probation has not complied with the self-reporting condition of his disciplinary probation, at a minimum, the discipline should require that the attorney prospectively demonstrate that he is now able and willing to comply with his reporting requirement. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 705.) The court therefore finds that a significant period of actual suspension, combined with a period of stayed suspension and probation is not only the appropriate discipline in this matter but is also necessary to ensure protection of the public, the courts, and the legal profession.

### **Recommendations**

#### **Discipline**

The court recommends that the probation of Respondent Franklin Samuel Adler, member No. 56417, imposed in Supreme Court case No. S246946 (State Bar Court case Nos. 16-O-17996 and 17-O-01719), be revoked; that the previous stay of execution of the suspension be lifted; and that Respondent be suspended from the practice of law for a period of one year; that execution of that suspension be stayed; and that Respondent be placed on probation for a period of one year on the following conditions:

#### **Conditions of Probation**

##### **Actual Suspension**

Respondent must be suspended from the practice of law for the first six months of Respondent's probation.

##### **Review Rules of Professional Conduct**

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126 and (2) provide a declaration, under penalty of perjury, attesting to Respondent's

compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

**Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions**

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

**Maintain Valid Official Membership Address and Other Required Contact Information**

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

**Meet and Cooperate with Office of Probation**

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

## **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court**

During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

### **Quarterly and Final Reports**

**a. Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

**b. Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and

signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

**c. Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

**d. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

#### **State Bar Ethics School**

Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar 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 this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this Order but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

#### **Proof of Compliance with Rule 9.20 Obligations**

For a minimum of one year after the effective date of discipline, Respondent is directed to maintain proof of Respondent's compliance with the Supreme Court's order that Respondent

comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include the names and addresses of all individuals and entities to which notification was sent pursuant to rule 9.20; copies of the notification letter sent to each such intended recipient; the original receipt and tracking information provided by the postal authority for each such notification; and the originals of all returned receipts and notifications of non-delivery. Respondent is required to present such proof upon request by the Office of Chief Trial Counsel, the Office of Probation, and/or the State Bar Court.

### **Commencement of Probation**

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

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

It is further recommended that Respondent be ordered to comply with the requirements of 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 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.<sup>7</sup> Failure to do so may result in disbarment or suspension.

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<sup>7</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

### **Multistate Professional Responsibility Examination**

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was previously ordered to do so in Supreme Court case No. S246946 and remains under an obligation to comply with this requirement.

### **Costs**

It is further recommended 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.


### **Request for Involuntary Inactive Enrollment**

The Office of Probation also seeks Respondent's involuntarily inactive enrollment pursuant to section 6007, subdivision (d). Section 6007, subdivision (d)(1), provides for an attorney's involuntary inactive enrollment for violating probation if: (A) the attorney is under a suspension order any portion of which has been stayed during a period of probation; (B) the court finds that probation has been violated; and (C) the court recommends that the attorney receive an actual suspension due to the probation violation or other disciplinary matter. Although the requirements of section 6007, subdivision (d)(1), have been met, after considering the protection of the public and, in particular, the length of the recommended actual suspension in this matter, the court will not order Respondent's involuntary inactive enrollment. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531 ["To order the involuntary



inactive enrollment of an attorney under subdivision (d) any time its requirements are met without regard to whether there is an issue of public protection and to the length of the actual suspension recommended could conceivably 'defeat or materially impair' the Supreme Court's inherent prerogatives." ]<sup>8</sup>

Dated: February 7, 2019

  
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CYNTHIA VALENZUELA  
Judge of the State Bar Court

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<sup>8</sup> Respondent's request to delay Respondent's involuntary inactive enrollment is denied as moot.

## 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 February 7, 2019, I deposited a true copy of the following document(s):

### ORDER RE MOTION TO REVOKE PROBATION

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:

FRANKLIN S. ADLER  
424 SOUTH BEVERLY DRIVE  
BEVERLY HILLS, CA 90212

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

TERRIE L. GOLDADE, PROBATION, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 7, 2019.

  
\_\_\_\_\_  
Paul Songco  
Court Specialist  
State Bar Court