

SEP 30 2003

STATE BAR COURT CLERK'S OFFICE
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THE STATE BAR COURT
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of

ROBERT E. RELAT,**Member No. 125467,**A Member of the State Bar.**Case No. 03-PM-00303-JMR****ORDER GRANTING MOTION TO
REVOKE PROBATION AND FOR
INVOLUNTARY INACTIVE
ENROLLMENT****I. Introduction**

In this probation revocation proceeding, Respondent **ROBERT E. RELAT** is charged with violating his probation conditions imposed by the California Supreme Court. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) seeks to revoke his probation 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 three years suspension be lifted, and that Respondent be actually suspended from the practice of law for 18 months.

II. Pertinent Procedural History

On June 30, 2003, the State Bar 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. Respondent did not file a response, as required by rule 563(b).

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



1 The court took this matter under submission on September 5, 2003.

2 **III. Findings of Fact and Conclusions of Law**

3 All factual allegations contained in the motion to revoke probation and supporting documents
4 are deemed admitted upon Respondent's failure to file a response. (Rule 563(b)(3).)

5 **A. Jurisdiction**

6 Respondent was admitted to the practice of law in California on December 12, 1986, and has
7 since been a member of the State Bar of California.

8 **B. Probation Conditions in Supreme Court Case No. S103618**

9 On April 5, 2002, in Supreme Court case No. S103618 (SCO), the California Supreme Court
10 ordered that:

- 11 1. Respondent be suspended from the practice of law for three years, that execution of
12 the suspension be stayed;
- 13 2. Respondent be placed on probation for four years, on the condition that he be actually
14 suspended for 21 months and until he has shown proof satisfactory to the State Bar
15 Court of his rehabilitation, fitness to practice and learning and ability in the general
16 law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional
17 Misconduct, as recommended by the Hearing Department of the State Bar Court in
18 its order approving stipulation filed September 20, 2001, as modified by its order
19 filed November 13, 2001 (State Bar Court case No. 99-O-12934 et al.);
- 20 3. Respondent comply with certain probation conditions, including, but not limited to:
 - 21 a. Submitting quarterly reports to the Probation Unit of the State Bar on each
22 January 10, April 10, July 10 and October 10 of the period of probation;
 - 23 b. Obtaining psychiatric or psychological help/treatment from a duly licensed
24 psychiatrist, psychologist, or clinical social worker at Respondent's own
25 expense a minimum of twice per month and providing evidence of
26 compliance to the Probation Unit with each quarterly report;
 - 27 c. Attending the State Bar Ethics School by May 5, 2003, and passing the test
28 given at the end of the session and providing proof of compliance; and

1 d. Attending the State Bar Ethics School Client Trust Accounting School by
2 May 5, 2003, and passing the test given at the end of the session and
3 providing proof of compliance.

4 Notice of the SCO was properly served upon Respondent in the manner proscribed by rule
5 24(a) of the California Rules of Court at Respondent's official address in accordance with Business
6 and Professions Code section 6002.1.²

7 **C. Probation Violations**

8 On May 1, 2002, the Probation Unit sent a letter to Respondent at his official address,
9 reminding him of the probation conditions.

10 Respondent filed the quarterly report due July 10, 2002. But he failed to do the following:

- 11 1. Timely file the quarterly reports due October 10, 2002, and January 10, and April 10,
12 2003 to the Probation Unit. Respondent belatedly submitted the October 2002 and
13 January 2003 quarterly reports on March 17, 2003. And he filed the April 10, 2003
14 report on April 14, 2003;
- 15 2. Report his compliance with the psychological/psychiatric probation conditions;
- 16 3. Submit proof of his attendance at the Ethics School by May 5, 2003, or at any other
17 time; and
- 18 4. Submit proof of his attendance at the Ethics School Client Trust Accounting School
19 by May 5, 2003, or at any other time.

20 Bad faith is not a requirement for a finding of culpability in a probation violation matter;
21 "instead, a 'general purpose or willingness' to commit an act or permit an omission is sufficient."
22 (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

23 Section 6093, subdivision (b), provides that violation of a probation condition constitutes
24 cause for revocation of any probation then pending, and may constitute cause for discipline. Section
25 6093, subdivision (c), provides that the standard of proof is the preponderance of the evidence.

26 Therefore, the State Bar has demonstrated by a preponderance of the evidence that
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28 ²References to sections are to the Business and Professions Code.

1 Respondent wilfully violated the probation conditions ordered by the Supreme Court in its April 5,
2 2002 order. Respondent failed to timely file the written quarterly reports that were due October 10,
3 2002, January 10, 2003, and April 10, 2003, failed to comply with the psychiatric/psychological
4 probation conditions, and failed to attend the Ethics School and the Ethics School Client Trust
5 Accounting School by May 5, 2003 or at any other time.

6 As a result, the revocation of Respondent's probation in case No. S103618 is warranted.

7 **IV. Mitigating and Aggravating Circumstances**

8 **A. Mitigation**

9 Since Respondent did not file a response to the probation revocation motion, no evidence in
10 mitigation was presented and none is apparent from the record. (Rules Proc. of State Bar, tit. IV,
11 Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e) (hereinafter "standards").)

12 **B. Aggravation**

13 In aggravation, Respondent has one prior record of discipline, the underlying matter. (Std.
14 1.2(b)(i).) His misconduct involved four client matters, commingling his client trust account with
15 his personal expenses, acts of moral turpitude, failure to perform competently, client abandonment,
16 and misappropriation.

17 Respondent's failure to fully participate in this proceeding is also an aggravating factor. (Std.
18 1.2(b)(vi).)

19 **V. Discussion**

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

22 "There has been a wide range of discipline imposed for probation violations from merely
23 extending probation ... to a revocation of the full amount of the stayed suspension and imposition
24 of that amount as an actual suspension." (*In the Matter of Gorman* (July 10, 2003, No. 01-PM-
25 04164) 4 Cal. State Bar Ct. Rptr. ____ [p. 9].)

26 In determining the level of discipline to be imposed, the court must consider the "total length
27 of stayed suspension which could be imposed as an actual suspension and the total amount of actual
28

1 suspension earlier imposed as a condition of the discipline at the time probation was granted.” (*In*
2 *the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. 525, 540.) The extent of the discipline is
3 dependent, in part, on the nature of the probation violation and its relationship to Respondent’s prior
4 misconduct. (*Ibid.*)

5 Here, Respondent was actually suspended for 21 months in the original disciplinary
6 proceeding for his misconduct in four client matters and mishandling his client trust account and was
7 given a three-year stayed suspension. The primary probation violation found was his failure to
8 comply with the rehabilitation conditions, to which he specifically stipulated. He has not provided
9 evidence of his attendance at a single session with a psychiatrist or psychologist; but he did note in
10 his quarterly reports that he had been attending Gamblers Anonymous meetings, which is not a
11 probation condition. He has failed to attend the Ethics School and Client Trust Accounting School.
12 And he has failed to timely file his probation reports.

13 Hence, the court finds good cause for granting the State Bar’s motion to revoke Respondent’s
14 probation and concludes that part of the period of the stayed suspension be imposed. “[A]n attorney
15 who wilfully violates a significant condition of probation ... can anticipate actual suspension as the
16 expected result, absent compelling mitigation circumstances.” (*In the Matter of Gorman, supra*, 4
17 Cal. State Bar Ct. Rptr. ____ [p. 11].)

18 But the State Bar’s recommendation that Respondent be actually suspended for three years,
19 the entire original period of stayed suspension, is excessive.

20 In recommending the degree of discipline, the court must consider not only Respondent’s
21 three years’ stayed suspension but also his 21 months’ actual suspension previously imposed as a
22 condition of the discipline at the time probation was granted. Moreover, Respondent did not
23 completely abandon his probationary duties in that he did file his quarterly reports, albeit late.
24 Therefore, the court concludes that an actual suspension of 18 months would be appropriate for
25 public protection and attorney rehabilitation.

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VI. Recommended Discipline

Accordingly, the court recommends as follows:

1. That the probation of Respondent **ROBERT E. RELAT** previously ordered in Supreme Court Case No. S103618 (State Bar Court case no. 99-O-12934 et al.) be revoked;
2. That the previous stay of execution of the suspension be lifted;
3. That Respondent be actually suspended from the practice of law for 18 months; and
4. That if Respondent is actually suspended for two years or more, he shall remain actually suspended until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

It is not recommended that Respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court as he was ordered to do so in Supreme Court Case No. S103618 and he has remained suspended from the practice of law since then.

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 Supreme Court Case No. S103618.

VII. Costs

The court recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and paid in accordance with section 6140.7.

VIII. Order of Involuntary Inactive Enrollment

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

Dated: September 29, 2003


JOANN M. REMKE
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. 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 September 30, 2003, I deposited a true copy of the following document(s):

**ORDER GRANTING MOTION TO REVOKE PROBATION AND FOR
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:

**ROBERT E. RELAT
P O BOX 256
SALINAS CA 93902**

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

ROBIN HAFFNER, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **September 30, 2003.**



Bernadette C. O. Molina
Case Administrator
State Bar Court