

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

In the Matter of)	Case No. 07-PM-12993-RAH
)	
GREGORY JOHN KHOUGAZ,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND FOR
Member No. 107530,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **Gregory John Khougaz** 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 previously stayed one year suspension be lifted, and that respondent be actually suspended from the practice of law for one year.

II. Pertinent Procedural History

On August 1, 2007, 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. Respondent did not file a response within 20 days of the service of the motion, as required by rule

¹References to rules are to the Rules of Procedures of the State Bar, unless stated otherwise.

563(b)(1).

The court took this matter under submission on September 11, 2007.

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 January 24, 1983, and has since been a member of the State Bar of California.

B. Probation Conditions in Supreme Court Case No. S143864

On August 9, 2006, in Supreme Court case No. S143864 (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, and that he be placed on probation for two years, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed April 28, 2006 (State Bar Court case No. 05-H-04322); and
2. Respondent comply with certain probation conditions, including, but not limited to:
 - a. Within 30 days from the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the probation conditions;
 - b. Submit quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation; and
 - c. Promptly review these terms and conditions of probation with his probation monitor to establish a manner and schedule of compliance. During the period of probation, respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

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

C. Probation Violations

On August 31, 2006, the Office of Probation sent a letter to respondent at his official address, outlining the probation conditions. This letter was not returned to the State Bar as undeliverable.

On January 23, 2007, the Office of Probation left respondent a voice mail message asking that he return the telephone call because he was out of compliance with the terms of his probation. Respondent did not return the phone call or contact the Office of Probation to schedule his initial meeting.

On February 8, 2007, the Office of Probation again left a telephone message for respondent. Respondent did not contact the Office of Probation.

On February 20 and March 1, 2007, the Office of Probation wrote to respondent and advised him of his noncompliance. The letters were not returned as undeliverable. The Office of Probation also sent him emails regarding the same on March 21 and April 12, 2007.

On April 12, 2007, respondent telephoned the Office of Probation and the initial meeting was conducted. During that telephone meeting, the Office of Probation discussed with respondent regarding his noncompliance, the terms and conditions of his probation, and the possibility that he would be referred for additional discipline if he continued in his noncompliance.

On July 17, 2007, the Office of Probation telephoned respondent, reminding him that his July 10, 2007, quarterly report was due. The Office of Probation also advised him to contact his probation monitor and to send copies of all his quarterly reports to his probation monitor. Respondent told the Office of Probation that he would file his quarterly report immediately and that he would send copies of all of his quarterly reports to his probation monitor. But he did not do so.

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

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

1. Contact the Office of Probation by October 9, 2006, to schedule a meeting (the meeting took place on April 12, 2007);
2. Submit the quarterly report due July 10, 2007, and timely submit quarterly reports due January 10 and April 10, 2007 (January and April reports were filed April 13, 2007); and
3. Promptly review the terms and conditions of probation with his probation monitor, communicate with his probation monitor and provide copies of any quarterly reports to his probation monitor as requested.

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 August 9, 2006 order. Respondent failed to timely contact the Office of Probation within 30 days from the effective date of discipline; failed to file the written quarterly report that was due July 10, 2007; failed to timely file the written quarterly reports that were due January 10 and April 10, 2007; failed to promptly review the terms and conditions of probation with his probation monitor, communicate with his probation monitor and provide copies of any quarterly reports to his probation monitor as requested.

As a result, the revocation of respondent’s probation in California Supreme Court case No. S143864 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 Atty. Sanctions for Prof. Misconduct, std. 1.2(e).³

B. Aggravation

In aggravation, respondent has two prior records of discipline. (Std. 1.2(b)(i).)

(1) Effective December 15, 2004, he was publicly reprovved for failing to perform services competently and to communicate in one client matter. (State Bar Court case No. 03-O-04272.)

(2) Effective September 8, 2006, in the underlying matter, respondent was ordered suspended for one year, stayed, and placed on probation for two years, for failing to submit quarterly reports in violation of the conditions attached to his public reprovval. Respondent participated in those proceedings.

But respondent's failure to fully participate in this proceeding is 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 extending probation ... to a revocation of the full amount of the stayed suspension and imposition of that 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, supra*, 1 Cal. State Bar Ct. Rptr. 525, 540.) The extent of the discipline is dependent, in part, on the nature of the probation violation and its relationship to respondent's prior misconduct. (*Ibid.*)

Here, respondent's prior records involved misconduct in one client matter and violation of his probation conditions. In the instant matter, respondent again failed to comply with the

³All further references to standards are to this source.

rehabilitation conditions. He failed to file a quarterly report, failed to timely file two quarterly reports, failed to timely contact the Office of Probation, and failed to timely communicate with his probation monitor and comply with the monitor's request.

“[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 a quarterly report 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 **Gregory John Khougaz** previously ordered in Supreme Court case No. S143864 (State Bar Court case No. 05-H-04322) be revoked;
2. That the previous stay of execution of the suspension be lifted; and
3. That respondent be actually suspended from the practice of law for one year.

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.

Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁴

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 S143864.⁵

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).⁶ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: October ____, 2007

RICHARD A. HONN
Judge of the State Bar Court

⁴Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

⁵On September 28, 2007, respondent was suspended for failing to pass the Multistate Professional Responsibility Exam, effective October 9, 2007.

⁶Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)