

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

In the Matter of	)	<b>Case No. 07-PM-13018-DFM</b>
	)	
<b>DMITRY DAVID KRAYEVSKY,</b>	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE PROBATION AND ORDER OF</b>
<b>Member No. 192548,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

Based upon alleged probation violations, the Office of Probation (OP), represented by Terrie Goldade, filed a motion pursuant to Business and Professions Code sections 6093, subdivisions (b) and (c)<sup>1</sup> and rules 560 et seq. of the Rules Proc. of State Bar<sup>2</sup> to revoke the probation of Dmitry David Krayevsky, imposed by the Supreme Court in its January 25, 2007, order in Supreme Court matter S148485 (State Bar Court case nos. 04-O-13094; 06-O-10684). Respondent did not participate in this proceeding although he was properly served with the motion by certified mail, return receipt requested, at his State Bar membership records address and at an alternate address.

For the reasons stated below, this court finds by a preponderance of the evidence that respondent wilfully failed to comply with the terms of his probation and grants the motion. (Section 6093, subd. (c).) Accordingly, the court recommends, *inter alia*, that respondent's probation be revoked, that the previously-ordered stay be lifted and that he be actually suspended from the practice of law for three years and until he complies with Rules Proc. of State Bar, tit.

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<sup>1</sup>Unless otherwise indicated, all further references to section refer to this source.

<sup>2</sup>All further references to rule are to this source.

IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>3</sup> standard 1.4(c)(ii). Finally, and as a consequence,, the court orders that respondent be enrolled inactive pursuant to section 6007, subdivision (d), effective three days following service of this order.

### **FINDINGS OF FACT**

#### **Jurisdiction**

Respondent was admitted to the practice of law in the State of California on December 9, 2007, was a member at all times pertinent to the allegations herein, and is currently a member of the State Bar of California.

#### **Probation Violations**

On September 12, 2006, the State Bar Court filed an order approving the stipulation of the parties in case nos. 04-O-13094 and 06-O-10684, recommending discipline consisting of stayed suspension for three years and until respondent complied with standard 1.4(c)(ii) and four years' probation on conditions including actual suspension for one year and until respondent complied with standard 1.4(c)(ii), among other things. A copy of the stipulation and the State Bar Court's orders approving and modifying same were properly served upon respondent on September 12 and October 12, 2006, respectively, at his State Bar membership records address by first-class mail, postage prepaid.

On January 25, 2007, the California Supreme Court filed an order in case no. S148485 (Supreme Court order) accepting the State Bar Court's recommendation and ordering respondent to comply with the conditions of probation recommended.

Pursuant to the Supreme Court order, respondent was ordered to comply with the following terms and conditions of probation, among others:

(a) During the period of probation, to submit to the OP a written report on the tenth of January, April, July and October 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 reports);

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<sup>3</sup>Future references to standard or std. are to this source.

(b) Obtain psychological or psychiatric help/treatment from a licensed psychiatrist, psychologist or clinical social worker a minimum of four times a month and provide evidence of same to the OP on a quarterly basis (psych reports);

(c) Attend at least 12 Alcoholics Anonymous meetings per month and provide satisfactory proof of attendance to the OP on or before the tenth of the following month (AA reports); and

(d) Furnish blood and/or urine samples to a licensed medical laboratory to show abstinence from alcohol and/or drugs. Respondent was to cause the laboratory to provide to the OP a screening report on or before the tenth of each month containing an analysis of respondent's blood and/or urine obtained not more than ten days previously (lab reports).

The Supreme Court order became effective on February 24, 2007, thirty days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent.<sup>4</sup>

On February 1, 2007, the OP wrote a letter to respondent reminding him of certain terms and conditions of his suspension and probation imposed pursuant to the Supreme Court's order. Enclosed with the letter were copies of the Supreme Court's order, the probation conditions portion of the stipulation and forms to use in submitting reports.

The February 1, 2007, letter was mailed on that same date to respondent's official State Bar membership records address via the United States Postal Service and was not returned as undeliverable.

On April 17, 2007, the OP telephoned respondent and informed him that his AA, psych and lab reports had not been received. Respondent said that he had sent his AA report on April 10, 2007 and would re-send it with the lab report. He also stated that he would call his therapist

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<sup>4</sup>Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 29.4(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts 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 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's order to respondent immediately after its filing.

to have the psych report sent.

On May 2, 2007, the OP telephoned respondent and again informed him that his AA and psych reports had not been received. He said that he would submit the AA report and that he had an appointment with his therapist that same day.

On June 12, 2007, the OP left respondent a voicemail message instructing him to get a lab test done within 24 hours because his lab report was due on June 10, 2007. He was also reminded that his AA reports had been due on the tenth of April, May and June 2007.

On June 13, 2007, the OP received a voicemail message from respondent indicating that he had had a lab test on June 11, 2007 and that he thought that the AA reports were due quarterly.

On that same date, the OP telephoned respondent and reminded him that, according to the stipulation, he was to submit the AA reports by the tenth of every month. He was also reminded that his July 10 quarterly report was coming up. He was informed that the OP had received the lab report.

On June 28, 2007, respondent telephoned the OP. He wanted to mail the July quarterly report early because he was going on vacation. He was told that he could not do so because the report would be defective if it was signed before the last day of the quarter. He stated that he would include his AA reports when he submitted the quarterly report.

On July 18, 2007, the OP left respondent a voicemail message reminding him to submit his July 10 quarterly report and his AA reports immediately.

On July 19, 2007, respondent left a voicemail message for the OP stating that he would hand-deliver his quarterly report and other documents the next day. He did not do so.

The OP did receive respondent's July 10, 2007, lab results by fax on July 31, 2007.

Respondent has not complied the conditions of his probation as follows:

(1) He did not file the July 10, 2007 quarterly and psych reports. He also did not timely submit his April 10, 2007, quarterly and psych reports, which were not submitted until April 11 and May 7, 2007, respectively.

(2) He did not submit the AA reports due on the tenth of April, May, June and July 2007;

and

(3) He did not submit the March 10, 2007 lab report. The lab reports he did submit were untimely as set forth below:

<u>Lab Report Due</u>	<u>Lab Report Submitted</u>
April 10, 2007	April 17, 2007
May 10, 2007	May 15, 2007
June 10, 2007	June 13, 2007
July 10, 2007	July 31, 2007

As of August 2, 2007, respondent has not complied with the aforementioned provisions of the Supreme Court's order.

### **CONCLUSIONS OF LAW**

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

Pursuant to section 6093, subdivision (b) and (c) and rule 561, the court concludes that the OP has demonstrated by a preponderance of the evidence that respondent wilfully violated the conditions of probation ordered by the Supreme Court in its January 25, 2007, order in Supreme Court case number S148485 by not submitting or not timely submitting the quarterly, psych, AA and lab reports as set forth above.

### **AGGRAVATING CIRCUMSTANCES**

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

In Supreme Court case no. S127704 (State Bar Court case nos. 03-O-05164; 04-O-11256; 04-O-11618; 04-O-11709; 04-O-11710; 04-O-12001), discipline was imposed consisting of stayed suspension for two years and until respondent complied with standard 1.4(c)(ii) and two years’ probation with conditions, among other things. Respondent was found culpable of engaging in the unauthorized practice of law while administratively suspended for noncompliance with MCLE requirements. Respondent and the State Bar stipulated to multiple acts of misconduct as an aggravating factor and to his candor and cooperation as a mitigating

factor.

As previously discussed, discipline was imposed in Supreme Court case number S148485 for not performing competently or communicating with one client and for not participating in the State Bar's investigation of those allegations of misconduct. He was also found culpable of seven probation violations: untimely filing six quarterly reports and not completing Ethics School and giving proof thereof to the OP. In aggravation, the court considered one prior instance of discipline, client harm, and multiple acts of misconduct. In mitigation, he was found to be candid and cooperative. It was also noted that he had been undergoing treatment for substance abuse. Respondent entered into a stipulation to resolve this matter.

Respondent engaged in multiple acts of misconduct here by failing to comply with multiple conditions of probation. (Std. 1.2(b)(ii).)

Respondent significantly harmed the administration of justice because noncompliance with probation conditions made it more much difficult for the State Bar appropriately to monitor him to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

Respondent's failure to comply with the probation conditions after being reminded by the OP demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

### **MITIGATING CIRCUMSTANCES**

No mitigating evidence was offered on respondent's behalf or received into evidence, and none can be gleaned from the record.

### **DISCUSSION**

Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) In determining the level of discipline, 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. at p. 540.)

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.7 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding. However, the period of actual suspension recommended in the instant case cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rule 562.) 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, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

The OP requests that respondent's probation imposed by the Supreme Court be revoked, that the stay of execution of the suspension previously imposed be lifted, and that respondent be actually suspended for three years and until he complies with standard 1.4(c)(ii), among other things. The court agrees.

The court is concerned about respondent's noncompliance with the above-mentioned conditions of his probation and with his lack of participation in these proceedings. The court notes that respondent participated in both of his prior disciplinary proceedings and entered into stipulations to resolve each. Respondent did not comply with the terms and conditions of his probation as to either of his prior disciplinary matters which is of great consequence and concern to the court. "[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 or timely file quarterly, psych, lab and AA reports warrants significant discipline. There is no indication that respondent has recognized the significance of his misconduct.

In consideration of respondent's violation of probation conditions imposed in both of his prior disciplinary matters, his lack of participation in these proceedings and continuing noncompliance with probation conditions despite the OP's efforts to secure compliance, the court

does not believe it worthwhile to recommend again placing him on probation subject to conditions. The prior disciplinary orders “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.)

Accordingly, the court finds good cause to GRANT the motion to revoke respondent’s probation and recommends the imposition of substantial discipline in this matter in the absence of evidence supporting an alternative.

### **DISCIPLINE RECOMMENDATION**

The court hereby recommends to the Supreme Court that respondent’s probation in Supreme Court matter S148485 (State Bar Court case nos. 04-O-13094; 04-O-13094) be revoked, that the previous stay of execution of the suspension be lifted, and that respondent Dmitry David Krayevsky, be actually suspended from the practice of law for three years and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing respondent’s compliance with said order.<sup>5</sup>

It is not recommended that respondent be ordered to complete State Bar Ethics School or to take and pass the Multistate Professional Responsibility Examination as he did so in connection with Supreme Court case no. S127704.

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<sup>5</sup>Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130 [addressing rule 955(c) of the California Rules of Court, the predecessor of rule 9.20].)



### **COSTS**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, which cost order shall be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **ORDER REGARDING INACTIVE ENROLLMENT**

The requirements of Business and Professions Code section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension; he was found to have violated probation conditions; and it has been recommended that respondent be actually suspended due to said violations.

**IT IS THEREFORE ORDERED** that respondent Dmitry David Krayevsky, be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order.

**IT IS ALSO ORDERED** that his inactive enrollment be terminated in the future as provided by Business and Professions Code section 6007, subdivision (d)(2).

**IT IS RECOMMENDED** that respondent's actual suspension in this matter commence as of the date of his inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: October 19, 2007

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DONALD F. MILES  
Judge of the State Bar Court