

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 09-PM-18782-PEM
)	
STEVE SEHAENG KWON)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 222338)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **Steve Sehaeng Kwon** 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, among other things, 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 probationary conditions and hereby grants, in part, the motion to revoke his probation. The court recommends, among other things, that respondent’s probation in Supreme Court matter S169572 (State Bar Court Case No. 08-O-12542) be revoked; that respondent be suspended from the practice of law for two years; that execution of the suspension be stayed, and that he be placed on probation for two years subject to the condition, among others, that he be actually suspended for one year.

II. Pertinent Procedural History

On December 4, 2009, the Office of Probation filed and properly served a motion to revoke probation on respondent, pursuant to Rules of Procedure of the State Bar of California (“Rules of Procedure”), rules 560, et seq. Respondent did not file a response, as required by rule 563(b) of the Rules of Procedure. The court ultimately took this matter under submission on January 5, 2010.

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 December 3, 2002, and has since been a member of the State Bar of California.

B. Probation Conditions in Supreme Court Case No. S169572

On March 4, 2009, in Supreme Court Case No. S169572, the California Supreme Court ordered that:

1. Respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years subject to the condition that he be actually suspended for thirty days; and
2. Respondent comply with other conditions of probation, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed October 27, 2008 (State Bar Court Case No. 08-O-12542), including, but not limited to:
 - a. Submitting to the Office of Probation on every January 10, April 10, July 10, and October 10, a written probation report stating, under penalty of

perjury, whether he complied with the Rules of Professional Conduct of the State Bar of California, the State Bar Act, and all the conditions of probation during the preceding calendar quarter (“quarterly probation reports”); and,

b. Submitting to the Office of Probation, within six months from the effective date of his discipline (by October 3, 2009), satisfactory evidence of completion of no less than six hours of Minimum Continuing Legal Education approved courses in law office management, attorney client relations and/or general ethics (“MCLE”).

Notice of the March 4, 2009 Supreme Court Order was properly served on respondent in the manner prescribed by California Rules of Court, rule 8.532(a), at respondent’s official address in accordance with Business and Professions Code section 6002.1.¹ The Supreme Court order became effective on April 3, 2009.

C. Probation Violations

On or about March 19, 2009, the Office of Probation sent a letter to respondent at his official address, outlining the terms and conditions of his probation. This letter was not returned to the Office of Probation as undeliverable, or for any other reason.

On May 8, 2009, the Office of Probation and respondent had an “initial” meeting. During this meeting, respondent was reminded of all of the terms, conditions, and deadlines associated with his probation.

Respondent timely submitted his first quarterly report on July 9, 2009. Respondent, however, failed to timely submit his second quarterly report - due October 10, 2009.

On November 12, 2009, the Office of Probation sent a letter to respondent, at his official address, advising that respondent was not in compliance with his probation because he had not

¹ All references to section(s) are to the Business and Professions Code, unless otherwise stated.

filed a quarterly report and had not submitted proof of completion of any MCLE. This letter was not returned to the State Bar as undeliverable, or for any other reason.

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

1. Submit with the Office of Probation his October 10, 2009 quarterly report; and
2. Provide the Office of Probation, within six months from the effective date of his discipline (by October 3, 2009), with satisfactory evidence of completion of no less than six hours of MCLE.

To establish culpability for a probation violation charged in a probation revocation proceeding, the State Bar must prove, by a preponderance of the evidence, the text of the probation condition that the attorney is charged with violating and that the attorney willfully failed to comply with it. Willfulness in this context does not require a bad purpose or evil intent. Instead, it requires only a general purpose or willingness to commit an act or permit an omission. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

The court finds that respondent violated the conditions of his probation and that those violations were willful. Respondent's willful probation violations warrant the revocation of his probation. (Section 6093, subd. (b).)

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).)²

B. Aggravation

In aggravation, respondent has a prior record of discipline. (Std. 1.2(b)(i).)

² All further references to standard(s) are to this source.

On March 4, 2009, the California Supreme Court, in the underlying matter, issued an order (S169572) suspending respondent from the practice of law for two years, staying execution of the suspension, and placing him on probation for two years on condition that he be actually suspended for 30 days. In this matter, respondent committed moral turpitude by knowingly making false representations to a client. In aggravation, respondent's misconduct significantly harmed his client. In mitigation, respondent had no prior record of discipline, and he cooperated with the State Bar and admitted his misconduct to the client.

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. at p. 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 has committed two probation violations and has failed to participate in the present proceedings. The Office of Probation recommends that respondent be revoked and that the entire two-year period of stayed suspension be imposed.³ The court disagrees.

While respondent's lack of participation is cause for concern, the court finds that the present probation violations do not warrant the imposition of a two-year period of actual suspension.

The court finds guidance in *In the Matter of Howard, supra*, 2 Cal. State Bar Ct. Rptr. 445. In *Howard*, the attorney was actually suspended for one year because he failed to submit two quarterly probation reports, failed to timely deliver financial records to a former client's accountant, and defaulted in the disciplinary proceeding. The attorney's lack of cooperation with the State Bar was a serious concern.

The facts and circumstances involved in the present matter are similar to *Howard*. Consequently, the court finds that a one-year period of actual suspension provides adequate protection to the public, the courts, and the legal profession. (See Std. 1.3.)

Accordingly, the court finds good cause to grant, in part, the motion to revoke respondent's probation and recommends, among other things, that respondent be actually suspended for one year.

VI. Recommended Discipline

The court recommends that the probation of **Steve Sehaeng Kwon**, State Bar Number 222338, be revoked. The court further recommends that respondent be suspended from the practice of law for two years, that execution of that period of suspension be stayed, and that he be placed on probation for two years, subject to the following conditions:

1. Respondent is suspended from the practice of law for the first year of probation;

³ The Office of Probation did not cite any case law in support of its recommended level of discipline.

2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
3. Respondent must submit written quarterly reports to the State Bar's Office of Probation ("Office of Probation") on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, the report must be submitted on the next following quarter date; and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probationary period;

4. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;
5. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, and to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
6. Within one year after the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of the session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education ("MCLE") requirements, and respondent will not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar); and
7. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request..

At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

The court further 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.⁴

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination since he was previously ordered to do so in S169572.

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).⁵ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: January ____, 2010

PAT McELROY
Judge of the State Bar Court

⁴ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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