



PUBLIC MATTER

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**THE STATE BAR COURT
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 04-PM-15230-PEM
MATTHEW JEREMY COHEN,)	DECISION AND ORDER OF
Member No. 199410,)	INVOLUNTARY INACTIVE
<u>A Member of the State Bar.</u>)	ENROLLMENT

INTRODUCTION

Based upon alleged probation violations, the Office of Probation ("OP"), represented by Jayne Kim, filed a motion pursuant to Business and Professions Code sections 6093(b) and 6093(c)¹ and rules 560 et seq. of the Rules Proc. of State Bar ("rule(s)") to revoke the probation of MATTHEW JEREMY COHEN, imposed by the Supreme Court in its October 22, 2003, order in Supreme Court matter S118202 (State Bar Court case no. 03-J-00044). 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.

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. (Section 6093(c).) As a result, the Court grants OCTC's motion to revoke Respondent's probation and its request to involuntarily enroll him as an inactive member of the State Bar pursuant to section 6007(d). The Court recommends that Respondent's probation be revoked, that the previously-ordered stay be lifted and

¹Unless otherwise indicated, all further references to "section" refer to provisions of the Business and Professions Code.

1 that he be actually suspended from the practice of law for two years and until he complies with
2 standard 1.4(c)(ii).

3 **FINDINGS OF FACT**

4 **Jurisdiction**

5 Respondent was admitted to the practice of law in the State of California on December 10,
6 1998, was a member at all times pertinent to the allegations herein, and is currently a member of the
7 State Bar of California.

8 **Probation Violations**

9 On June 12, 2003, the State Bar Court filed and properly served on Respondent's counsel an
10 order approving the stipulation of the parties in case no. 03-J-00044, recommending discipline
11 consisting of stayed suspension of two years and until he complied with standard 1.4(c)(ii),
12 Standards for Attorney Sanctions for Professional Misconduct ("standards"), three years probation
13 on conditions including actual suspension of one year and until he made specified restitution, among
14 other things.

15 On October 22, 2003, the California Supreme Court filed an order in case no. S118202
16 ("Supreme Court order") accepting the State Bar Court's recommendation and ordering Respondent
17 to comply with the conditions of probation recommended.

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

20 (a) During the period of probation, to submit a written report on January 10, April 10, July
21 10 and October 10 of each year or part thereof during which the probation is in effect to the OP,
22 stating under penalty of perjury that he has complied with all provisions of the State Bar Act and
23 Rules of Professional Conduct during said period ("quarterly reports"); and

24 (b) to declare under penalty of perjury, with each quarterly report, compliance with certain
25 restrictions while actually suspended.

26 The Supreme Court order became effective on November 21, 2003, thirty days after it was
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1 entered. (Rule 953(a), California Rules of Court.) It was properly served on Respondent.²

2 On November 6, 2003, the OP wrote a letter to Respondent reminding him of certain terms
3 and conditions of his suspension and probation imposed pursuant to the Supreme Court's order.
4 Enclosed with the letter were copies of the Supreme Court's order, the probation conditions portion
5 of the stipulation and an instruction sheet and form to use in submitting quarterly reports.

6 The November 6 letter was mailed to Respondent's then-official State Bar membership
7 records address via the United States Postal Service with first-class postage prepaid. Neither this
8 nor other correspondence from the OP to Respondent was returned as undeliverable.

9 The OP sent Respondent a second reminder letter on January 28, 2004, because his January
10 10 quarterly report had not been received.

11 On April 8, 2004, the OP received the January 10 and April 10, 2004, quarterly reports. No
12 further reports were received from Respondent thereafter.

13 On October 15, 2004, the OP sent Respondent a reminder letter advising that his July 10 and
14 October 10, 2004, quarterly reports had not been received. The letter instructed him to submit those
15 reports forthwith.

16 Respondent has not complied the conditions of his probation. He has not submitted the
17 quarterly reports due on July 10 and October 10, 2004.

18 As of November 10, 2004, Respondent has not complied with the aforementioned provisions
19 of the Supreme Court's order.

20 CONCLUSIONS OF LAW

21 Bad faith is not a requirement for a finding of culpability in a probation violation matter;
22 "instead, a 'general purpose or willingness' to commit an act or permit an omission is sufficient.

23
24 ²Although no proof was offered that the Clerk of the Supreme Court served the Supreme
25 Court's order upon Respondent, rule 24(a) of the California Rules of Court requires clerks of
26 reviewing courts to immediately transmit a copy of all decisions of those courts to the parties
27 upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties
28 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.

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

2 Pursuant to Business and Professions Code section 6093(b) and (c) and rule 561, the Court
3 concludes that OCTC has demonstrated by a preponderance of the evidence that Respondent wilfully
4 violated the conditions of probation ordered by the Supreme Court in its October 22, 2003, order in
5 Supreme Court case number S118202. He has not submitted quarterly reports due on July 10 and
6 October 10, 2004.

7 There is insufficient evidence to find that Respondent did not submit along with the quarterly
8 reports the declaration of compliance with certain restrictions because that issue is not addressed in
9 the declaration supporting this motion.

10 **AGGRAVATING CIRCUMSTANCES**

11 In aggravation, Respondent has one prior record of discipline. (Standard 1.2(b)(i).) As
12 previously discussed, discipline was imposed in Supreme Court case number S118202 for violations
13 of Rules of Professional Conduct 3-100(A) and 1-320(A) and section 6106. Further, he was found
14 culpable of not maintaining a client’s property and records safely and completely and of accepting
15 compensation for legal services from someone other than the client without the client’s consent after
16 full disclosure. In aggravation, the Court found harm to a client, the public or the administration of
17 justice and, in mitigation, he was found to have been candid. Respondent entered into a stipulation
18 to resolve this matter.

19 Respondent significantly harmed the administration of justice as his failure to comply with
20 the conditions of his probation made it more much difficult for the State Bar to appropriately monitor
21 his in seeking to insure the protection of the public and the courts. (Standard 1.2(b)(iv).)

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

25 **MITIGATING CIRCUMSTANCES**

26 No mitigating evidence was offered on Respondent’s behalf or received into evidence, and
27 none can be gleaned from the record.

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1 DISCUSSION

2 Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary
3 probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In*
4 *the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) In determining the
5 level of discipline, the Court must consider the “total length of stayed suspension which could be
6 imposed as an actual suspension and the total amount of actual suspension earlier imposed as a
7 condition of the discipline at the time probation was granted.” (*In the Matter of Potack, supra*, 1
8 Cal. State Bar Ct. Rptr. at p. 540.)

9 Section 6093 authorizes the revocation of probation for a violation of a probation condition,
10 and standard 1.7 requires that the Court recommend a greater discipline in this matter than that
11 imposed in the underlying disciplinary proceeding. However, the period of actual suspension
12 recommended in the instant case cannot exceed the period of stayed suspension imposed in the
13 underlying proceeding. (Rule 562.) The extent of the discipline to recommend is dependent, in part,
14 on the seriousness of the probation violation and Respondent’s recognition of his misconduct and
15 his efforts to comply with the conditions. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr.
16 at p. 540.)

17 OCTC requests that Respondent’s probation imposed by the Supreme Court in its October
18 22, 2003, order in Supreme Court matter S118202 be revoked, that the stay of execution of the
19 suspension previously imposed be lifted, and that Respondent be actually suspended for two years
20 and until he complies with standard 1.4(c)(ii), among other things. Although culpability of all of the
21 probation violations charged was not found, the Court believes that recommending the imposition
22 of the full amount of stayed suspension is merited.

23 “[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney
24 probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept.
25 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In
26 addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards
27 the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)
28 Thus, Respondent’s failure to file quarterly reports warrants significant discipline.

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ORDER REGARDING INACTIVE ENROLLMENT

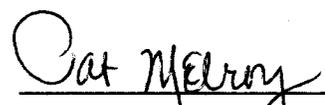
Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code section 6007(d). The requirements of section 6007(d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that Respondent be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

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

IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by Business and Professions Code section 6007(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(d)(3).)

Dated: January 11, 2005



PAT McELROY
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 January 11, 2005, I deposited a true copy of the following document(s):

DECISION AND ORDER OF 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:

MATTHEW J. COHEN
1917 LARKIN ST
SAN FRANCISCO CA 94109

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

JAYNE KIM, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **January 11, 2005**.


George Hue
Case Administrator
State Bar Court