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STATE BAR COURT
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LOS ANGELES

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

In the Matter of)	Case No. 08-PM-12170-RAH
)	
CHRISTOPHER J. O'KEEFE,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND FOR
Member No. 165197,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **Christopher J. O'Keefe** (respondent) 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 two year suspension be lifted, and that respondent be actually suspended from the practice of law for two years and 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) of the Standards for Attorney Sanctions for Professional Misconduct.

II. Pertinent Procedural History

On May 30, 2008, 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 (Rules of Procedure). The motion to revoke was mailed to respondent's official membership records address.¹ On July 7, 2008, respondent attempted to file a response to the motion to revoke, but that response was rejected because no proof of service was attached and an insufficient number of copies were provided.

On August 5, 2008, the court held an in-person status conference. Terrie Goldade, from the Office of Probation, and respondent were both in attendance. A hearing was set for September 16, 2008, and respondent was ordered to file his response to the motion to revoke by August 8, 2008.

Respondent failed to file a response by August 8, 2008. Therefore, on August 21, 2008, the court issued an order vacating the September 16, 2008 hearing date and submitting the matter without a hearing. A copy of this order was properly mailed to respondent at his official membership records address.

On August 21, 2008, respondent again attempted to file a response to the motion to revoke, but that response was again rejected because it was not accompanied by a proof of service that bore an original signature.²

Respondent has yet to properly file a response, as required by rule 563(b).

¹ Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's official membership records address history.

² The attached declaration of service was unsigned.

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 June 18, 1993, and has since been a member of the State Bar of California.

B. Probation Conditions in Supreme Court Case No. S137831

On December 16, 2005, in Supreme Court case No. S137831 (SCO), the California Supreme Court ordered that, among other things, respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be actually suspended for six months and until: (1) he makes restitution; (2) he provides an accounting and a refund of any unearned fees; and (3) the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure.³ Respondent was further ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

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 6002.1.⁴

³ Said order included a requirement that if respondent is actually suspended for two years or more, he is to 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) of the Standards for Attorney Sanctions for Professional Misconduct.

⁴ References to section(s) are to the Business and Professions Code.

On December 22, 2006, respondent filed a motion for relief from actual suspension pursuant to rule 205 of the Rules of Procedure. On January 31, 2007, the court issued an order granting respondent's motion for relief from actual suspension. As a condition of terminating respondent's actual suspension, the court ordered that respondent be placed on probation for a period of three years, subject to numerous conditions including, but not limited to, the following:

1. Respondent shall submit written quarterly reports to the State Bar Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall 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, that report shall be submitted on the next following quarter date, and cover the extended period.

In addition to all 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 probation period.

2. Respondent shall obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist or clinical social worker at respondent's own expense a minimum of two times per month, and shall furnish evidence to the State Bar Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment shall continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final. Respondent shall furnish evidence in each quarterly report in a form satisfactory to the Office of Probation that he is complying with this condition.

If the treating psychiatrist, psychologist or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

A copy of this order was properly served on respondent's attorney;⁵ and the order became effective immediately upon service. Accordingly, respondent was entitled to resume the practice of law in this State immediately thereafter, subject to the terms and conditions of probation and upon payment of all applicable State Bar fees and costs.

C. Probation Violations

On February 9, 2007, the Office of Probation sent a letter to respondent's counsel, outlining the probation conditions. This letter was not returned to the State Bar as undeliverable or for any other reason.

Respondent's first quarterly report and his quarterly evidence of psychiatric or psychological help/treatment (medical report) were filed by the Office of Probation, in a timely fashion, on April 10, 2007. However, between July 2007 and May 2008, despite numerous telephonic and written communications between the Office of Probation and respondent or his counsel,⁶ respondent failed to comply with several conditions of his probation.

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

⁵ David Carr, Esq., represented respondent at the time.

⁶ On October 15, 2007, respondent informed the Office of Probation that he was no longer represented by David Carr.

1. Submit to the Office of Probation quarterly reports due on October 10, 2007⁷ and April 10, 2008, and timely submit the quarterly reports due July 10, 2007 and January 10, 2008 (filed on July 18, 2007 and April 5, 2008 respectively); and

2. Submit to the Office of Probation the medical reports due on July 10, 2007,⁸ January 10, 2008, and April 10, 2008, and timely submit the medical report due October 10, 2007 (filed October 15, 2007).⁹

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.

The State Bar has demonstrated by a preponderance of the evidence that respondent willfully violated the probation conditions ordered by the Supreme Court in its December 16, 2005 order, as subsequently modified by the State Bar Court on January 31, 2007, as a condition for terminating respondent’s actual suspension pursuant to rule 205 of the Rules of Procedure. Respondent failed to file the written quarterly reports that were due October 10, 2007 and April

⁷ Respondent submitted two late reports for this reporting period, however, neither report was accepted by the Office of Probation due to various defects.

⁸ Respondent provided the Office of Probation with a copy of his July 10, 2007 report, however, he did not provide an original as required by the Office of Probation.

⁹ Respondent provided the Office of Probation medical reports from December 2007 through February 2008, however, this time period overlaps two separate probationary reporting quarters and does not adequately establish respondent’s compliance in either reporting quarter. Additionally, in March 2008, respondent submitted another medical report from a psychiatrist stating that respondent had been seen once per week over the “last three months.” However, this report was dated October 1, 2008, and was therefore found to be defective by the Office of Probation.

10, 2008; failed to timely file the written quarterly reports that were due July 10, 2007 and January 10, 2008; failed to furnish the Office of Probation with satisfactory evidence of compliance with his medical conditions which was due July 10, 2007, January 10, 2008, and April 10, 2008; and failed to timely furnish the Office of Probation with satisfactory evidence of compliance with his medical conditions which was due October 10, 2007.

As a result, the revocation of respondent's probation in California Supreme Court case No. S137831 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).)¹⁰

B. Aggravation

In aggravation, respondent has three prior records of discipline.¹¹ (Std. 1.2(b)(i).)

(1) Supreme Court Case No. S132495 (03-O-04419; 04-O-14313)

Effective July 10, 2005, respondent was ordered suspended for one year, stayed, with one year probation, and 60-days actual suspension, for misconduct in two matters involving the handling of his client trust account and his failure to cooperate in a disciplinary investigation. Respondent participated in this proceeding.

¹⁰ All further references to standard(s) are to this source.

¹¹ The Office of Probation introduced certified copies of only one of respondent's three prior State Bar disciplines. Therefore, the court takes judicial notice of respondent's full record of State Bar discipline pursuant to Evidence Code section 452, subdivision (h).

(2) Supreme Court Case No. S137831 (04-O-14389)

Effective January 15, 2006, respondent, in the underlying proceeding, was ordered suspended for two years, stayed, with six months actual suspension and until restitution/accounting, and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure,¹² for misconduct including client abandonment, failing to refund unearned fees, and failing to cooperate in a disciplinary investigation. Respondent did not participate in this proceeding.

(3) Supreme Court Case No. S132495 (06-PM-10555)

Effective June 29, 2006, respondent's probation in Supreme Court Case No. S132495 was revoked, the previous stay of suspension was lifted, and he was actually suspended for 30 days for failing to timely file two quarterly reports and failing to timely update his contact information. Respondent participated in this proceeding.

Respondent's failure to fully participate in the instant proceeding is also 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.)

¹² As noted previously, this order was subsequently modified by the State Bar Court on January 31, 2007, terminating respondent's actual suspension pursuant to rule 205 of the Rules of Procedure and adding additional probationary conditions.

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.*)

“[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 comply with his quarterly reporting conditions warrants significant discipline.

The present case marks the second time respondent has failed to comply with the requirements of disciplinary probation. In consideration of respondent’s current misconduct, his prior record of discipline, his lack of participation in these proceedings, and continuing noncompliance with probationary 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 recommend, among other things, 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 **Christopher J. O'Keefe** previously ordered in Supreme Court case No. 137831 (State Bar Court case No. 04-O-14389) 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 two years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

The court also 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.¹³

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners during the period of his actual suspension and furnish satisfactory proof of such to the State Bar's Office of Probation within said period.

¹³Respondent 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.)


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).¹⁴ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: September 16, 2008



RICHARD A. HONN
Judge of the State Bar Court

¹⁴Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. 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 Los Angeles, on September 16, 2008, 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 Los Angeles, California, addressed as follows:

CHRISTOPHER J. O'KEEFE
THE LAW OFFICES OF CHRISTOPHER J O'KEEFE
4066 SAN JUAN RD
SAN DIEGO, CA 92103

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:


by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Terrie L. Goldade, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 16, 2008.



Cristina Potter
Case Administrator
State Bar Court