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STATE BAR COURT CLERK'S OFFICE
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HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of

LISA I. FOCHETTI,

Member No. 171954,

A Member of the State Bar.

Case No. 04-N-12119-JMR

DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

I. Introduction

In this default matter, **Respondent LISA I. FOCHETTI** is found culpable, by clear and convincing evidence, of failing to timely comply with rule 955 of the California Rules of Court,¹ as ordered by the California Supreme Court on November 4, 2003, in case No. S118240.

The court recommends that Respondent be disbarred from the practice of law.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges (NDC) was filed and properly served on Respondent on July 13, 2004, at her official membership records address. (Rules Proc. of State Bar, rules 60(b) and 583.) Respondent filed a response on August 10, 2004.

Due to her failure to appear at the September and November 2004 status conferences, the court ordered Respondent to appear in person on November 19 for an order to show cause hearing as to why her response should not be stricken and her default entered. Yet, Respondent continued to fail to appear in court on November 19, 2004, and did not file a response to the order to show

¹All references to rule 955 are to rule 955 of the California Rules of Court.

1 cause. At the hearing, the court attempted to reach Respondent by telephone but to no avail.
2 Respondent also failed to appear at her deposition on November 9, 2004.

3 Accordingly, the court ordered Respondent's response stricken and her default entered on
4 November 19, 2004. The order of entry of default was properly mailed to Respondent's official
5 membership records address. Respondent was enrolled as an inactive member under Business and
6 Professions Code section 6007(e)² on November 22, 2004.

7 The court took this matter under submission on December 17, 2004, following the filing of
8 State Bar's brief on the level of discipline.

9 **III. Findings of Fact and Conclusions of Law**

10 All factual allegations of the NDC are deemed admitted upon entry of Respondent's default
11 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
12 200(d)(1)(A).)

13 **A. Jurisdiction**

14 Respondent was admitted to the practice of law in California on December 1, 1994, and has
15 been a member of the State Bar since that time.

16 **B. Violation of California Rules of Court, Rule 955**

17 On November 4, 2003, the California Supreme Court in case No. S118240 (State Bar Court
18 case No. 02-C-12143) suspended Respondent from the practice of law for one year, stayed the
19 execution of the suspension and actually suspended her for 30 days and until the State Bar Court
20 grants a motion to terminate her actual suspension under rule 205 of the Rules of Procedure of the
21 State Bar. Among other things, the Supreme Court ordered Respondent to comply with rule 955,
22 subdivisions (a) and (c), within 120 and 130 days, respectively, after the effective date of the
23 Supreme Court order if she remained actually suspended for 90 days or more. The order became
24 effective December 4, 2003, and was duly served on Respondent. Respondent has not filed a motion
25 to terminate her actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar

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27 ²All references to sections are to the Business and Professions Code, unless otherwise
28 indicated.

1 and remains suspended pursuant to the Supreme Court order.³ Thus, Respondent was required to
2 comply with rule 955.

3 Rule 955(c) mandates that Respondent "file with the Clerk of the State Bar Court an affidavit
4 showing that [s]he ... has fully complied with those provisions of the order entered pursuant to this
5 rule."

6 Upon filing of the Supreme Court order, under rule 24(a) of the California Rules of Court,
7 the Office of the Clerk of the Supreme Court of California served upon Respondent a copy of the
8 order imposing discipline and directing Respondent to comply with rule 955. (Evid. Code, § 664.)

9 Here, Respondent was aware of the rule 955 requirements and was to have filed the rule 955
10 affidavit by April 14, 2004. But she had ignored the requirements and did not file the rule 955
11 compliance declaration until July 12, 2004, a day before the Notice of Disciplinary Charges was filed
12 in this matter and almost three months after the due date. Respondent has offered no explanation
13 to this court for her noncompliance.

14 Whether Respondent is aware of the requirements of rule 955 or of her obligation to timely
15 comply with those requirements is immaterial. "Wilfulness" in the context of rule 955 does not
16 require actual knowledge of the provision which is violated. The Supreme Court has disbarred
17 attorneys whose failure to keep their official addresses current prevented them from learning that
18 they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

19 The State Bar has established by clear and convincing evidence that Respondent wilfully
20 failed to timely comply with rule 955 as ordered by the Supreme Court.

21 **C. Violation of Business and Professions Code Section 6103**

22 Respondent's failure to timely comply with rule 955 also constitutes a violation of section
23 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or
24 violation of such orders constitutes cause for disbarment or suspension.

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27 ³Pursuant to Evidence Code section 452(d), the court takes judicial notice of its own
28 records.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴

B. Aggravation

Respondent's one prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) In California Supreme Court case No. S118240, the underlying matter, she was suspended for one year, stayed, and was actually suspended for 30 days and until the State Bar Court terminates her actual suspension under rule 205 of the Rules of Procedure of the State Bar. Her discipline was based upon a misdemeanor conviction of a violation of Penal Code section 243(e)(1) (battery committed against her spouse) in 2000. Respondent's criminal violation did not involve moral turpitude but constituted other misconduct warranting discipline.

Respondent's failure to participate in this disciplinary matter prior to the entry of her default is a serious aggravating factor. (Std. 2(b)(vi).)

V. Discussion

Respondent's wilful failure to timely comply with 955(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although she has been given opportunities to do so. Moreover, she had repeatedly failed to participate in these disciplinary proceedings by defaulting in the underlying matter and in the instant case.

In *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, disbarment was appropriate for an attorney who failed to participate in four disciplinary proceedings and filed

⁴All further references to standards are to this source.

1 the rule 955(c) affidavit 21 days after it was due.

2 Therefore, Respondent's disbarment is necessary to protect the public, the courts and the
3 legal community, to maintain high professional standards and to preserve public confidence in the
4 legal profession. It would undermine the integrity of the disciplinary system and damage public
5 confidence in the legal profession if Respondent were not disbarred for her wilful disobedience of
6 the Supreme Court order.

7 **VI. Recommended Discipline**

8 The court recommends that Respondent **LISA I. FOCHETTI** be disbarred from the practice
9 of law in the State of California and that her name be stricken from the rolls of attorneys in this State.

10 It is not recommended that the Supreme Court order Respondent to comply with rule 955,
11 paragraphs (a) and (c), of the California Rules of Court, since she filed a rule 955 declaration on July
12 12, 2004, and has not practiced law since that time.

13 **VII. Costs**

14 The court recommends that costs be awarded to the State Bar pursuant to section 6086.10,
15 and that those costs be payable in accordance with section 6140.7.

16 **VIII. Order of Involuntary Inactive Enrollment**

17 It is ordered that Respondent be transferred to involuntary inactive enrollment status under
18 section 6007(c)(4) and rule 220(c) of the Rules of Procedure of the State Bar. The inactive
19 enrollment shall become effective three calendar days after this order is filed.

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21
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23 Dated: February 2, 2005

24 
25 **JOANN M. REMKE**
26 Judge of the State Bar Court
27
28

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 February 2, 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:

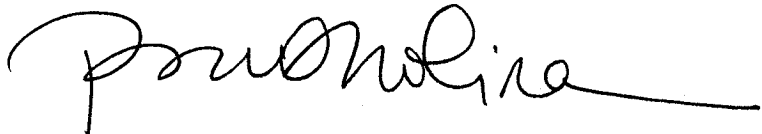
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

LISA I. FOCHETTI
320 COLLEGE AVE #300
SANTA ROSA CA 95401

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

WONDER LIANG, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **February 2, 2005.**



Bernadette C. O. Molina
Case Administrator
State Bar Court