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**STATE BAR COURT
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LOS ANGELES**

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

PUBLIC MATTER

In the Matter of

Case No. 04-O-10158-RAH

LESLIE L. HARTWELL,

DECISION

Member No. 66139,

A Member of the State Bar.

I. INTRODUCTION

In this disciplinary matter which proceeded by default, Joy Chantarasompoth appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Leslie L. Hartwell (Respondent) did not appear in person or by counsel.

Respondent is charged with failing to obey a court order of the California Supreme Court requiring him to comply with conditions of probation. After considering the evidence and the law, the court finds by clear and convincing evidence that Respondent is culpable of violating section 6103 of the Business and Professions Code.¹

Accordingly, the court recommends that Respondent be suspended for three years and that the suspension be stayed and that Respondent be actually suspended for one year and until he complies with rule 205, subdivision (a) and (c) of the Rules of Procedure of the State Bar of California (Rules of Procedure).

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

1 **II. PROCEDURAL HISTORY**

2 On February 26, 2004, the State Bar filed a Notice of Disciplinary Charges (NDC) in case
3 number 04-O-10158. On that same date the State Bar properly served the NDC on Respondent at
4 his official membership records address, by certified mail, return receipt requested, as provided in
5 Business and Professions Code section 6002.1(c). The U.S. Postal Service returned the NDC
6 bearing the stamp "Box Closed, Return to Sender."

7 On March 3, 2004, Respondent was properly served at his official membership records
8 address with a notice advising him, among other things, that an initial status conference would be
9 held on March 30, 2004. Respondent did not appear at the March 30, 2004, status conference.

10 Respondent did not file a responsive pleading to the NDC. On April 22, 2004, the State Bar
11 filed and properly served a motion for entry of default on Respondent at his official membership
12 records address. The motion advised Respondent that minimum discipline of one year actual
13 suspension would be sought if he was found culpable. Respondent did not respond to the motion.

14 On May 11, 2004, the court entered Respondent's default and enrolled him inactive effective
15 three days after service of the order. The order was served on Respondent at his membership records
16 address by certified mail, return receipt requested.

17 On June 10, 2004, the State Bar filed a request for waiver of default hearing and a brief on
18 culpability and discipline. The State Bar included a certified copy of Respondent's prior record of
19 discipline.² On that same day the Court took this matter under submission for decision.

20 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

21 Unless ordered by the court based on contrary evidence, the factual allegations set forth in
22 the NDC are deemed admitted upon entry of default and no further proof is required to establish the
23 truth of such facts. (Bus. & Prof. Code section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).)
24 The court's factual findings are based on the allegations contained in the NDC and the certified copy
25 of Respondent's prior record of discipline.

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²In accordance with rule 202, Rules of Procedure, the Court admits into evidence the certified copy of Respondent's prior record of discipline.

1 **Facts**

2 Respondent was admitted to the practice of law in California on December 18, 1975, and has
3 been a member of the State Bar at all times since.

4 On December 20, 2001, the Hearing Department of the State Bar Court filed an order
5 approving a Stipulation Re Facts, Conclusions of Law and Disposition (Stipulation) which
6 Respondent entered into with the State Bar in case number 99-C-12292.

7 On January 24, 2002, the Hearing Department filed an order modifying the stipulation.

8 On May 17, 2002, the California Supreme Court filed a final disciplinary order in *In re Leslie*
9 *Layton Hartwell on Discipline*, Supreme Court Case No. S105458 (State Bar Court Case No. 99-C-
10 12292). In its order the Supreme Court suspended Respondent from the practice of law for six
11 months, stayed execution of the suspension, and placed Respondent on probation for eighteen
12 months on condition that he be actually suspended for 30 days.

13 The Supreme Court order became effective June 16, 2002. (Cal. Rules of Court, rule 953(a).)
14 In absence of evidence to the contrary, the Court finds that the Supreme Court order was properly
15 served on Respondent (Cal. Rules of Court, rule 24(a); Evid. Code section 664.)

16 The Supreme Court order required Respondent to comply with the other conditions of
17 probation, including restitution, recommended by the Hearing Department of the State Bar Court in
18 its Order approving Stipulation filed December 20, 2001, as modified by its order filed January 24,
19 2002.

20 Pursuant to the Supreme Court order, Respondent was required to comply with the following
21 terms and conditions of probation, among others, during the probation period:

22 1. Submit written quarterly reports to the Office of Probation³ on each January 10,
23 April 10, July 10, and October 10 of the period of probation, stating under penalty of perjury whether
24 Respondent has complied with the State Bar Act, the Rules of Professional Conduct and all
25 probation conditions during the preceding calendar quarter. In addition to all quarterly reports, a
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28 ³The NDC and Stipulation refer to the Probation Unit of the Office of the Chief Trial
Counsel which is currently known as the Office of Probation.

1 final report, containing the same information, is due no earlier than twenty (20) days before the last
2 day of the period of probation and no later than the last day of probation.⁴

3 2. To pay restitution to William or Elaine Keet (or the Client Security Fund if
4 appropriate) in the amount of \$50.00 per month during the period of probation. To pay restitution
5 to Charles Picker (or the Client Security Fund if appropriate) in the amount of \$50.00 per month
6 during the period of probation. To include in each quarterly report, satisfactory evidence of all
7 restitution payments made by him during that reporting period.

8 3. To provide proof of passage of the Multistate Professional Responsibility
9 Examination to the Office of Probation within one year of the effective date of the Supreme Court
10 order imposing discipline.

11 As of the date the State Bar filed the NDC in this matter, Respondent failed to do any of the
12 following:

13 1. Submit the final quarterly report to the Office of Probation which was due no later
14 than December 16, 2003.

15 2. Submit proof of any restitution payments to the Office of Probation.

16 3. Submit proof of passage of the MPRE to the Office of Probation which was due no
17 later than June 16, 2003.

18 **Legal Conclusions**

19 **Section 6103 (Failure to Obey Court Order)**

20 Section 6103 prohibits an attorney from wilfully disobeying or violating an order of the court
21 requiring him to do or forbear an act connected with or in the course of his profession, which he
22 ought in good faith to do or forbear. A general purpose or willingness to commit an act or permit
23 an omission is the threshold mental state necessary to justify discipline for violation of probation
24 conditions, and bad faith is not a requirement for a probation violation to be wilful. (*In the Matter*
25 *of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

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27 ⁴The Court notes that while the NDC fails to allege that Respondent was required to file a
28 final quarterly report, such a requirement is evident upon review of the certified copy of
Respondent's prior record of discipline.

1 consequences of his misconduct by failing to belatedly rectify his probation violations even after the
2 NDC in this proceeding was filed. (Standard 1.2(b)(v).)

3 4. Respondent's failure to participate in this disciplinary matter prior to the entry of his
4 default is a serious aggravating factor. (Standard 1.2(b)(vi); *Conroy v. State Bar* (1991) 53 Cal.3d
5 495, 507.)

6 Discussion

7 The purpose of disciplinary proceedings is not to punish the attorney, but to protect the
8 public, to preserve public confidence in the profession, and to maintain the highest possible
9 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; Standard
10 1.3.)

11 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
12 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
13 imposing discipline.

14 Standard 2.6(b) and section 6103 provide for disbarment or suspension for violations of
15 section 6103.

16 The standards, however, are guidelines from which the court may deviate in fashioning the
17 most appropriate discipline considering all the proven facts and circumstances of a given matter.
18 (*Howard v. State Bar* (1990) 51 Cal.3d 215.) They are not mandatory sentences imposed in a blind
19 or mechanical manner." (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

20 Public protection and rehabilitation of the attorney are the primary goals of disciplinary
21 probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.)
22 Violating probation conditions significantly related to the misconduct for which probation was given
23 warrants greater discipline than violating less significant conditions that do not call into question an
24 attorney's progress toward rehabilitation or raise concerns about the need for public protection.
25 (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. 525, 540.)

26 Respondent has been found culpable of failing to comply with the terms of his probation in
27 wilful violation of a court order. There is no mitigation. In aggravation, the Court has found a prior
28 record of discipline, multiple acts of misconduct, indifference toward rectification or atonement, and

1 failure to participate in the proceeding prior to the entry of default.

2 The court finds the following cases instructive in determining the appropriate level of
3 discipline:

4 In *In the Matter of Howard, supra*, 2 Cal. State Bar Ct Rptr. 445, an attorney was charged
5 with violations of sections 6093(b), 6068(k), and 6103, and rule 1-110 of the Rules of Professional
6 Conduct⁵ due to his failure to timely deliver certain financial records to a certified public accountant,
7 his failure to show satisfactory proof that he had complied with a certain superior court order, and
8 his failure to submit certain quarterly reports. The attorney was found to have violated the terms and
9 conditions of his disciplinary probation and thereby wilfully violated sections 6068(k) and 6103.
10 Because the attorney's failure to comply with his probation conditions precluded a determination of
11 whether restitution was appropriate, his probation violations were deemed serious enough to warrant
12 a lengthy period of actual suspension. In aggravation, the attorney failed to participate in the
13 disciplinary proceeding and had a prior incident of discipline consisting of the discipline for which
14 probation was imposed. The attorney received a one-year actual suspension and until he complied
15 with standard 1.4(c)(ii).

16 In *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81, an attorney
17 received a one-year actual suspension after he failed to file his initial quarterly report, and failed to
18 make required restitution in the amount of \$1,166.50 in wilful violation of sections 6068(k) and
19 6103. In aggravation, the attorney showed indifference toward rectifying the harm he caused and
20 had additional uncharged misconduct related to his failure to cooperate during the pretrial process
21 defective probation reports he subsequently filed. In mitigation the attorney suffered from emotional
22 difficulties and had good character. The attorney received a one-year actual suspension and until he
23 made restitution.

24 In *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 145, an attorney
25 received a three-year stayed suspension and four years of probation conditioned on a one-year actual
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28 ⁵Unless otherwise noted, all further references to "rule(s)" refer to the Rules of Professional Conduct.

1 suspension for wilfully violating sections 6093(b), 6068(k), and 6103 due to his failure to comply
2 with the restitution, therapy evidence, and quarterly reporting requirements of his probation. In
3 aggravation the attorney had a prior record of discipline, multiple acts of wrongdoing, and uncharged
4 misconduct due to his failure to obtain therapy. In mitigation, the attorney made good faith attempts
5 to pay restitution and obtain therapy, and also cooperated with the State Bar. Noting that payment
6 of restitution and filing quarterly reports are important steps toward rehabilitation, the court
7 determined that Hunter's probation violations reflected adversely on his rehabilitation efforts and
8 thereby called into question the need to protect the public.

9 Respondent's probation violations are comparable to those in each of the above-cited cases.
10 Furthermore, the Court finds that filing a final probation report, providing evidence of restitution
11 payments, and providing evidence of successful passage of the MPRE are important steps toward
12 rehabilitation. As in *Broderick*, Respondent's probation violations adversely reflect on his
13 rehabilitation efforts and call into question the need to protect the public. As in *Howard*,
14 Respondent's probation violations are serious enough to warrant a lengthy period of actual
15 suspension.

16 After considering Respondent's misconduct and the law, and balancing the aggravating and
17 mitigating factors, the Court recommends, among other things, actual suspension for one year and
18 until Respondent provides evidence of restitution and until Respondent complies with rule 205.

19 **V. DISCIPLINE RECOMMENDATION**

20 Accordingly, it is hereby recommended that Respondent LESLIE L. HARTWELL be
21 suspended from the practice of law for three years, that said suspension be stayed, and that he be
22 actually suspended from the practice of law for one year and until he provides satisfactory proof to
23 the State Bar Office of Probation of payment of restitution to William or Elaine Keet (or the Client
24 Security Fund, if appropriate) in the amount of \$900.00 and Charles Picker (or the Client Security
25 Fund, if appropriate) in the amount of \$900.00, and until the State Bar Court grants a motion to
26 terminate Respondent's actual suspension at its conclusion or upon such later date ordered by the
27 court. (Rules Proc. of State Bar, rule 205(a), (c).)

28 It is also recommended that Respondent be ordered to comply with the conditions of

1 probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual
2 suspension.

3 It is further recommended that Respondent be ordered to comply with the requirements of
4 rule 955 of the California Rules of Court within 30 calendar days of the effective date of the
5 Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days
6 of the effective date of the order showing his compliance with said order.

7 If the period of actual suspension reaches or exceeds two years, it is further recommended
8 that Respondent remain actually suspended until he provides proof satisfactory to the State Bar Court
9 of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to
10 standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. (Rules Proc.
11 of State Bar, rule 205(b).)

12 As Respondent is required to take and pass the Multistate Professional Responsibility
13 Examination (MPRE) in connection with the Supreme Court order in case number S105458, the
14 Court does not recommend that he take the MPRE in connection with this matter.⁶

15 **VI. COSTS**

16 The Court recommends that costs be awarded to the State Bar pursuant to section 6086.10
17 and that those costs be payable in accordance with section 6140.7.

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21 Dated: August 24, 2004



RICHARD A. HONN
Judge of the State Bar Court

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27 ⁶According to State Bar Membership Records, Respondent was suspended September 23,
28 2003, due to his failure to pass the MPRE. Respondent's suspension will continue until he
successfully passes the MPRE.

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 Los Angeles, on August 24, 2004, I deposited a true copy of the following document(s):

DECISION, filed August 24, 2004

in a sealed envelope for collection and mailing on that date as follows:

- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**LESLIE LAYTON HARTWELL
P O BOX 2385
HOLLYWOOD, CA 90078 2385**

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

Joy Chantarasompoth, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 24, 2004.**



Milagro del R. Salmeron
Case Administrator
State Bar Court