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**THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of
TRACY LYNN WILLIAMS,
Member No. 161265,
A Member of the State Bar.

Case No. 04-PM-13717-JMR
**DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT**

INTRODUCTION

Based upon alleged probation violations, the Office of Probation, 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 of Procedure of the State Bar to revoke the probation of Tracy Lynn Williams imposed by the Supreme Court in its August 1, 2003, order in Supreme Court case number S116086 (State Bar Court case no. 01-N-03531). Respondent did not participate in this proceeding although she was properly served with the motion by certified mail, return receipt requested, at her State Bar membership records address.²

For the reasons stated below, this court finds by a preponderance of the evidence that Respondent wilfully failed to comply with the terms of her probation. (Section 6093(c).) As a result, the court grants the motion to revoke Respondent's probation and its request to involuntarily

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

²On August 20, 2004, Respondent was properly served at her membership records address with a notice of assignment. This correspondence was not returned to the State Bar Court as undeliverable.

1 enroll her as an inactive member of the State Bar pursuant to section 6007(d). The court
2 recommends that Respondent's probation be revoked, that the previously-ordered stay be lifted and
3 that she be actually suspended from the practice of law for two years and until she complies with
4 standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

5 FINDINGS OF FACT

6 Jurisdiction

7 Respondent was admitted to the practice of law in the State of California on December 14,
8 1992, was a member at all times pertinent to the allegations herein, and is currently a member of the
9 State Bar of California.

10 Probation Violations

11 On April 4, 2003, the State Bar Court filed an order approving the stipulation of the parties
12 in case no. 01-N-03531, recommending discipline a stayed suspension of two years and until
13 Respondent complied with standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional
14 Misconduct, and two years probation on conditions including actual suspension of three months,
15 among other things. A copy of the stipulation and the State Bar Court's order approving same were
16 properly served upon Respondent's counsel on April 4, 2003, at her State Bar membership records
17 address by first-class mail, postage prepaid.

18 On August 1, 2003, the California Supreme Court filed an order in case no. S116086
19 ("Supreme Court order") accepting the State Bar Court's recommendation and ordering Respondent
20 to comply with the conditions of probation recommended.

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

23 (a) During the period of probation, to submit a written report on January 10, April 10, July
24 10 and October 10 of each year or part thereof during which the probation is in effect to the Office
25 of Probation, stating under penalty of perjury that she has complied with all provisions of the State
26 Bar Act and Rules of Professional Conduct during said period;

27 (b) Quarterly, on the above-stated dates, submit a declaration under penalty of perjury that
28 she has complied with certain restrictions while actually suspended; and

1 (c) With each quarterly report, submit of compliance with Lawyer Assistance Program
2 ("LAP") conditions.

3 The Supreme Court order became effective on August 31, 2003, thirty days after it was
4 entered. (Cal. Rules of Court, rule 953(a).) It was properly served on Respondent.³

5 On August 29, 2003, the Office of Probation wrote a letter to Respondent reminding her of
6 certain terms and conditions of her suspension and probation imposed pursuant to the Supreme
7 Court's order. The letter reminded Respondent of her obligations to file quarterly reports and other
8 conditions of probation, among other things. This is correspondence from Office of Probation to
9 Respondent was not returned as undeliverable.

10 The Office of Probation sent Respondent a second reminder letter on October 22, 2003, and
11 asking her to submit the October 10 quarterly report. It, too, was not returned as undeliverable.

12 On November 4, 2003, and February 4, 2004, the Office of Probation received Respondent's
13 quarterly reports due on October 10, 2003, and January 10, 2004, respectively, along with the
14 declaration regarding restrictions and proof of compliance with LAP. No reports were received
15 thereafter.

16 During the Office of Probation's telephone conversation with Respondent on April 27, 2004,
17 Respondent stated that she would fax the April 10, 2004, reports to the Office of Probation. The
18 reports were never received.

19 On June 16, 2004, the Office of Probation sent Respondent a letter asking her to submit the
20 April 10 reports forthwith. The letter also reminded her that the next report was due on July 10,
21 2004. This correspondence was not returned as undeliverable. The Office of Probation did not
22 receive a response to this letter.

23 _____
24 ³Although 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 Respondent has not submitted quarterly reports nor has she submitted evidence of
2 compliance with the LAP conditions or a declaration of compliance with restrictions while actually
3 suspended, all due on April 10 and July 10, 2004, although she was reminded to do so by letter and
4 telephone.

5 As of August 10, 2004, Respondent has not complied with the aforementioned provisions
6 of the Supreme Court's order.

7 CONCLUSIONS OF LAW

8 Bad faith is not a requirement for a finding of culpability in a probation violation matter;
9 "instead, a 'general purpose or willingness' to commit an act or permit an omission is sufficient.
10 (Citations.)" (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

11 Pursuant to sections 6093(b) and (c) and rule 561 of the Rules of Procedure of the State Bar,
12 the court concludes that Office of Probation has demonstrated by a preponderance of the evidence
13 that Respondent wilfully violated the conditions of probation ordered by the Supreme Court in its
14 August 1, 2003, order in Supreme Court case number S116086 by failing to submit to the Office of
15 Probation the quarterly reports, evidence of compliance with LAP conditions and declaration
16 regarding restrictions while actually suspended as set forth above.

17 AGGRAVATING CIRCUMSTANCES

18 In aggravation, Respondent has three prior records of discipline. (Standard 1.2(b)(i)).⁴ As

19 _____
20 ⁴The State Bar has the burden of proving all aggravating circumstances by clear and
21 convincing evidence. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 932-933; *In the Matter of*
22 *Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128, 148.) Rule 216(a) of the Rules of
23 Procedure provides, in relevant part, that a prior record of discipline consists of an authenticated
24 copy of all charges, stipulations, findings and decisions reflecting or recommending imposition
25 of discipline. Rule 216 clearly anticipates that the prosecution will introduce certified copies of
26 documents reflecting a respondent's prior record of discipline. Such practice makes the prior
27 record of discipline a part of the official record of the State Bar Court proceeding and enhances
28 the ability of the Supreme Court to conduct its independent, *de novo* review of the State Bar
Court's decision and the record supporting that decision.

26 In this proceeding, the Office of Probation did not attach copies of all documents
27 reflecting Respondent's prior disciplinary record. The court, on its own motion, judicially
28 notices Respondent's prior disciplinary record and will consider it in making its decision in this
proceeding. However, it is the better practice for the Office of Probation to fully comply with its
evidentiary obligations.

1 previously discussed, discipline was imposed in Supreme Court case number S116086 for not
2 complying with the Supreme court's prior disciplinary order to submit an affidavit pursuant to rule
3 955(c), Cal. Rules of Court. Aggravating factors were prior records of discipline and harm to the
4 administration of justice. In mitigation, the parties agreed that Respondent had been candid and
5 cooperative; had acted in good faith; and suffered from emotional or physical difficulties.
6 Respondent entered into a stipulation to resolve this matter which resulted in the following
7 discipline: stayed suspension of two years and until she complied with standard 1.4(c)(ii); two years
8 probation with conditions including three months actual suspension.

9 By order filed March 6, 2002, in Supreme Court case number S103280 (State Bar Court case
10 nos. 99-O-10472; 99-O-10473; 99-O-11195; 99-O-12004; 99-O-12080; 99-O-12541; 00-O-10496
11 (Cons.)), discipline was imposed including stayed suspension of two years and until she complied
12 with standard 1.4(c)(ii) and three years probation with conditions including actual suspension of one
13 year and until she complied with standard 1.4(c)(ii). The parties stipulated to Respondent's
14 culpability, in seven client matters, of violating Rules of Professional Conduct 3-110(A) (seven
15 counts), 3-300, 3-510, 3-700(A)(2) and (D)(1) (one count each) and sections 6068(m) (four counts)
16 and 6068(i) (one count). Aggravating factors were prior records of discipline and harm to clients,
17 the legal profession or the administration of justice. Mitigating factors were candor and cooperation
18 and suffering from emotional or physical difficulties.

19 By order filed on March 14, 2001, in Supreme Court case number S094228 (State Bar Court
20 case no. 99-O-03739), discipline was imposed consisting of one year stayed suspension and actual
21 suspension of 60 days and until she made specified restitution and complied with rule 205, Rules
22 Proc. of State Bar. In this default matter, she was found culpable of violating rules 3-100(A) and 3-
23 700(D)(2) of the Rules of Professional Conduct (two counts each); section 6068(m) (one count); and
24 section 6068(i) (two counts). In aggravation, the Court found multiple acts of misconduct and
25 indifference toward rectification of her conduct. No mitigating factors were found.

26 The court notes the similarity of the misconduct in the prior cases to that in the instant matter.
27 In one prior instance of discipline, she did not obey a disciplinary order to comply with rule 955,
28 California Rules of Court.

1 Respondent engaged in multiple acts of misconduct by failing to comply with multiple
2 conditions of probation. (Standard 1.2(b)(ii).)

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

6 Respondent's failure to comply with the probation conditions after being reminded by the
7 Office of Probation demonstrates indifference toward rectification of or atonement for the
8 consequences of her misconduct. (Standard 1.2(b)(v).)

9 MITIGATING CIRCUMSTANCES

10 No mitigating evidence was offered on Respondent's behalf or received into evidence, and
11 none can be gleaned from the record.

12 DISCUSSION

13 Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary
14 probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In*
15 *the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) In determining the
16 level of discipline, the court must consider the "total length of stayed suspension which could be
17 imposed as an actual suspension and the total amount of actual suspension earlier imposed as a
18 condition of the discipline at the time probation was granted." (*In the Matter of Potack, supra*, 1
19 Cal. State Bar Ct. Rptr. at p. 540.)

20 Section 6093 authorizes the revocation of probation for a violation of a probation condition,
21 and standard 1.7 requires that the court recommend a greater discipline in this matter than that
22 imposed in the underlying disciplinary proceeding. However, the period of actual suspension
23 recommended in the instant case cannot exceed the period of stayed suspension imposed in the
24 underlying proceeding. (Rules Proc. of State Bar, rule 562.) The extent of the discipline to
25 recommend is dependent, in part, on the seriousness of the probation violation and Respondent's
26 recognition of her misconduct and her efforts to comply with the conditions. (*In the Matter of*
27 *Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

28 The Office of Probation requests that Respondent's probation imposed by the Supreme Court

1 in its August 1, 2003, order in Supreme Court case number S116086 be revoked, that the stay of
2 execution of the suspension previously imposed be lifted, and that Respondent be actually suspended
3 for two years and until she complies with standard 1.4(c)(ii). The court agrees.

4 The court is concerned about Respondent's failure to comply with the above-mentioned
5 conditions of her probation. Respondent participated in the underlying prior disciplinary proceeding
6 and entered into a stipulation to resolve it. Respondent was aware of the terms and conditions of her
7 disciplinary probation, yet failed to comply with them.

8 "[A] probation 'reporting requirement permits the State Bar to monitor [an attorney
9 probationer's] compliance with professional standards.'" (*In the Matter of Weiner* (Review Dept.
10 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In
11 addition, "an attorney probationer's filing of quarterly probation reports is an important step towards
12 the attorney's rehabilitation." (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)
13 Thus, Respondent's failure to file quarterly and reports regarding compliance with LAP and
14 restrictions while actually suspended warrants significant discipline. There is no indication that
15 Respondent recognized her misconduct or of her efforts to comply with the conditions.

16 In consideration of Respondent's violation of probation conditions, the similarity of this
17 misconduct with prior misconduct and her lack of participation in these proceedings and continuing
18 noncompliance with probation conditions despite the Office of Probation's efforts to secure it, the
19 court does not believe it worthwhile to recommend again placing her on probation subject to
20 conditions.

21 The prior disciplinary order "provided [Respondent] an opportunity to reform her conduct
22 to the ethical strictures of the profession. His culpability in [the matter] presently under
23 consideration sadly indicates either his unwillingness or inability to do so." (*Arden v. State Bar*
24 (1987) 43 Cal.3d 713, 728.)

25 Accordingly, the court finds good cause to GRANT the motion to revoke Respondent's
26 probation and recommends the imposition of substantial discipline in this matter in the absence of
27 evidence supporting an alternative.

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1 **DISCIPLINE RECOMMENDATION**

2 The court hereby recommends to the Supreme Court that Respondent's probation in Supreme
3 Court case number S116086 (State Bar Court case no. 01-N-03531) be revoked, that the previous
4 stay of execution of the suspension be lifted, and that Respondent Tracy Lynn Williams be actually
5 suspended from the practice of law for two years and until she complies with standard 1.4(c)(ii),
6 Standards for Attorney Sanctions for Professional Misconduct.

7 It is not recommended that Respondent be ordered to comply with the requirements of rule
8 955 of the California Rules of Court because she was previously ordered to do so in Supreme Court
9 case number S116086 (State Bar Court case no. 01-N-03531) and has remained actually suspended
10 since.

11 It is not recommended that Respondent be ordered to successfully complete State Bar Ethics
12 School or to take and pass the Multistate Professional Responsibility Examination as she was
13 ordered to do so in Supreme Court case numbers S103280 and SO94228, respectively.

14 **COSTS**

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

17 **ORDER REGARDING INACTIVE ENROLLMENT**

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

22 IT IS THEREFORE ORDERED that Respondent Tracy Lynn Williams be involuntarily
23 enrolled as an inactive member of the State Bar of California pursuant to section 60007(d). This
24 enrollment shall be effective three days following service of this order.

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IT IS ALSO ORDERED that her inactive enrollment be terminated as provided by section 6007(d)(2).

IT IS RECOMMENDED that Respondent's actual suspension in this matter commence as of the date of her inactive enrollment pursuant to this order. (Section 6007(d)(3).)

Dated: October 12, 2004



JOANN M. REMKE
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 October 12, 2004, 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:

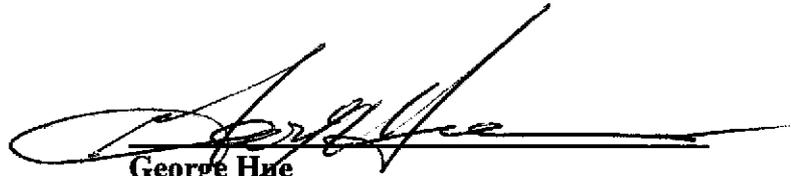
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

TRACY L. WILLIAMS
P O BOX 3032
COSTA MESA CA 92628

- [X] 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 **October 12, 2004.**


George Hue
Case Administrator
State Bar Court