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STATE BAR COURT
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LOS ANGELES

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

In the Matter of)	Case No. 04-PM-14981-RMT
SUE E. CASTRELLON,)	ORDER GRANTING MOTION TO
Member No. 128823,)	REVOKE PROBATION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

INTRODUCTION

Based upon alleged probation violations, the State Bar of California, Office of Probation ("State Bar") filed a motion to revoke the probation of Respondent Sue E. Castellon ("Respondent") imposed by the Supreme Court in its order filed on February 26, 2004, in Case No. S121073 (State Bar Court Case Nos. 00-O-13521, etc.).

The State Bar requests that Respondent's probation be revoked, and that Respondent be actually suspended for three years, the entire period of suspension previously stayed by the Supreme Court. The State Bar also requests that Respondent be ordered to comply with rule 955 of the California Rules of Court ("rule 955"), and that Respondent be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007(d).¹

For the reasons stated below, the State Bar's motion to revoke Respondent's probation is hereby granted, as is its request to involuntarily enroll Respondent to inactive status. The Court therefore recommends that Respondent be actually suspended from the practice of law for three

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

1 years and until she has shown proof satisfactory to the State Bar Court of her rehabilitation,
2 fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii),
3 Standards for Attorney Sanctions for Professional Misconduct. The Court shall also
4 involuntarily enroll Respondent as an inactive member of the State Bar pursuant to section
5 6007(d).

6 PERTINENT PROCEDURAL HISTORY

7 On October 26, 2004, the State Bar filed with the State Bar Court a motion to revoke
8 Respondent's probation, accompanied by the declaration of Lydia Dineros and Exhibits 1-3 in
9 support of said motion. A copy of the motion, the declaration of Lydia Dineros and Exhibits 1-3,
10 as well as a Probation Revocation Response form, were properly served upon Respondent on
11 October 26, 2004, by certified mail, return receipt requested, addressed to Respondent at her
12 latest address shown on the official membership records of the State Bar ("official address")
13 pursuant to section 6002.1(c) and rules 60 and 563(a) of the Rules of Procedure of the State Bar
14 of California ("Rules of Procedure").² The State Bar requested a hearing in this matter if
15 Respondent filed a response to the motion, unless the court determined, based solely upon the
16 motion and the response thereto, that imposition of the discipline requested by the State Bar was
17 warranted. There is no evidence as to whether the copy of the motion and supporting documents
18 served upon Respondent was returned to the State Bar by the U.S. Postal Service as
19 undeliverable or for any other reason.

20 On November 2, 2004, a Notice of Assignment and Notice of Initial Status Conference
21 was filed setting an in-person status conference for November 23, 2004. A copy of said notice
22 was served upon Respondent by first-class mail, postage fully prepaid, addressed to Respondent
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25 ²The certified copy of Respondent's address history dated September 17, 2004, which is
26 attached as part of State Bar Exhibit 1, is not competent evidence to establish that documents
27 served after September 17, 2004, were properly served upon Respondent. The Court therefore
28 takes judicial notice of the State Bar's official membership records pursuant to Evidence Code
section 452(h) which indicate that effective March 25, 2003, Respondent's official address
became, and remains as of the date of this order granting the State Bar's motion to revoke
Respondent's probation, 2220 Otay Lakes Rd. #502, Chula Vista, CA 91915.

1 at her official address. The copy of said notice served upon Respondent was not returned to the
2 State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

3 Respondent did not participate either in-person or by counsel at the November 23, 2004,
4 status conference. On November 30, 2004, the Court filed a Status Conference Order, a copy of
5 which was served upon Respondent by first-class mail, postage fully prepaid, addressed to
6 Respondent at her official address. The copy of said order served upon Respondent was not
7 returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other
8 reason.

9 Respondent did not file a response to the State Bar's motion to revoke her probation, and
10 the time for doing so expired.

11 The Court therefore ordered this matter to stand submitted for decision as of January 21,
12 2005.³

13 FINDINGS OF FACT⁴

14 Jurisdiction

15 Pursuant to Evidence Code section 452(h), the Court takes judicial notice of the official
16 membership records pertaining to Respondent which are maintained by the State Bar of
17 California. These records reflect that Respondent was admitted to the practice of law in the State
18 of California on June 17, 1987, was a member at all times pertinent to the allegations herein, and
19 is currently a member of the State Bar of California.

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22 ³On January 21, 2005, the Court issued an Order of Submission in which this matter was
23 ordered to stand submitted for decision as of the date of the filing of said order. A copy of said
24 order was properly served upon Respondent on January 21, 2005, by first-class mail, postage
25 fully prepaid, addressed to Respondent at her official address. The copy of said order served
upon Respondent was not returned to the State Bar Court by the U.S. Postal Service as
undeliverable or for any other reason.

26 ⁴These findings of fact are based on the admitted factual allegations contained in the State
27 Bar's motion to revoke Respondent's probation, the declaration of Lydia Dineros, and State Bar
28 Exhibits 1-3 attached thereto. (Rules Proc. of State Bar, rule 563(b)(3).) The declaration of
Lydia Dineros and State Bar Exhibits 1-3 are admitted into evidence pursuant to rule 563(e) of
the Rules of Procedure.

1 **Probation Violations**

2 By order dated February 26, 2004, the Supreme Court imposed discipline on Respondent
3 in Case No. S121073 (State Bar Court Case Nos. 00-O-13521, etc.). The Supreme Court
4 suspended Respondent for three years, but stayed the execution of the suspension on the
5 condition that Respondent comply with all terms of probation.

6 As terms of probation, Respondent was ordered, among other things, to do the following:
7 (1) submit to the State Bar's Office of Probation⁵ written quarterly reports on each January 10,
8 April 10, July 10 and October 10 of the probationary period; and (2) with each quarterly report
9 pertaining to periods in which she was actually suspended, declare under penalty of perjury that
10 she has complied with specified restrictions during her period of actual suspension.

11 On March 5, 2004, Lydia Dineros ("Dineros"), Probation Deputy for the Office of
12 Probation, State Bar of California, mailed a copy of the disciplinary order imposing probation
13 and a letter confirming the terms and conditions of probation, including suspension, to
14 Respondent at her official address. The letter indicated that quarterly reports were due on a
15 quarterly basis beginning on July 10, 2004. Enclosed with the letter were, inter alia, a copy of
16 the Supreme Court's February 26, 2004, disciplinary order and a copy of the conditions of
17 Respondent's probation, quarterly report instructions, and a quarterly report form. The letter was
18 not returned to the State Bar as undeliverable.

19 The Supreme Court order became effective on March 27, 2004, thirty days after it was
20 entered. (Cal. Rules of Court, rule 953(a).)⁶

21 _____
22 ⁵The State Bar's Office of Probation was formerly known as the Probation Unit, Office of
23 the Chief Trial Counsel.

24 ⁶Although 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 On August 4, 2004, Dineros mailed a letter to Respondent advising Respondent that her
2 first quarterly report had been due no later than July 10, 2004; that the Office of Probation had
3 not received her first quarterly report; and requesting that she submit the report immediately.
4 Enclosed with the letter was a copy of Dineros's March 5, 2004, letter. The letter was not
5 returned to the State Bar as undeliverable.

6 On August 23, 2004, Dineros telephoned Respondent and left her a message to call back
7 Dineros. On August 30, 2004, Respondent returned Dineros's telephone call. At that time,
8 Dineros advised Respondent that Dineros had not received Respondent's July 10, 2004, quarterly
9 report. Respondent stated that she would fax the report the next day and mail the original to
10 Dineros. This was the last contact Dineros had with Respondent.

11 Respondent failed to submit the written quarterly reports due on July 10 and October 10,
12 2004, and failed to declare under penalty of perjury that she had complied with specified
13 restrictions during her period of actual suspension in the quarterly reports due on July 10 and
14 October 10, 2004.

15 CONCLUSIONS OF LAW

16 Bad faith is not a requirement for a finding of culpability in a probation violation matter;
17 "instead, a 'general purpose or willingness' to commit an act or permit an omission is sufficient.
18 (Citation.)" (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)
19 Pursuant to section 6093(c) and rule 561 of the Rules of Procedure, the Court concludes that the
20 State Bar has demonstrated by a preponderance of the evidence that Respondent wilfully violated
21 certain conditions of probation ordered by the Supreme Court by failing to submit the written
22 quarterly reports due on July 10 and October 10, 2004.⁷ These conclusions warrant the

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24 ⁷The Court will not find a separate violation of probation for Respondent's wilful failure
25 to declare under penalty of perjury that she had complied with specified restrictions during her
26 period of actual suspension in the quarterly reports due on July 10 and October 10, 2004, as such
27 violation is encompassed within the finding that Respondent wilfully violated probation by
28 failing to submit the quarterly reports due on July 10 and October 10, 2004. Obviously, if a
member does not submit the quarterly reports due on July 10 and October 10, the member cannot
have declared under penalty of perjury in those reports that she had complied with specified
restrictions during her period of actual suspension.

1 revocation of probation as provided by section 6093(b).

2 **AGGRAVATING CIRCUMSTANCES**

3 In aggravation, Respondent has a prior record of discipline. (Rules Proc. of State Bar, tit.
4 IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i) (“standard”).)⁸ On February
5 26, 2004, the Supreme Court filed an order in Case No. 121073 (State Bar Court Case Nos. 00-
6 O-13521, etc.) suspending Respondent from the practice of law for three years; staying execution
7 of said suspension; and placing Respondent on probation for four years subject to certain
8 conditions of probation, including that she be actually suspended for two years and until she has
9 shown proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice and
10 learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney
11 Sanctions for Professional Misconduct.

12 In this prior disciplinary matter, Respondent was found culpable in ten client matters. In
13 nine client matters, Respondent wilfully violated rule 3-110(A) by recklessly, repeatedly or
14 intentionally failing to perform legal services with competence and section 6068(m) for failing to
15 respond promptly to reasonable client status inquiries and/or failing to keep a client reasonably

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17 ⁸The State Bar has the burden of proving all aggravating circumstances by clear and
18 convincing evidence. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 932-933; *In the Matter of*
19 *Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128, 148.) Rule 216(a) of the Rules of
20 Procedure provides, in pertinent part, that a prior record of discipline consists of an authenticated
copy of all charges, stipulations, findings and decisions reflecting or recommending imposition
of discipline.

21 Rule 216 clearly anticipates that the State Bar will introduce certified copies of
22 documents reflecting a respondent’s prior record of discipline. Such practice makes the prior
23 record of discipline a part of the official record of the State Bar Court proceeding and enhances
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.

24 In this proceeding, the State Bar did not attach copies of all documents reflecting
25 Respondent’s prior disciplinary record. Pursuant to Evidence Code section 452(d), the Court
26 takes judicial notice of Respondent’s prior record of discipline. Although the Court has
independently obtained copies of Respondent’s prior disciplinary record and will consider those
records in making its decision in this proceeding, the Court will insist, in the future, that the State
Bar fully meet its evidentiary obligations.

27 The Court hereby directs the Case Administrator assigned to this matter to mark
28 Respondent’s prior disciplinary record as a court exhibit in this proceeding and to include that
exhibit as a part of the record that is transmitted to the Supreme Court.

1 informed of significant developments with respect to their legal matter. In addition, Respondent
2 was also found culpable of a single wilful violation of rule 3-300 for entering into a business
3 transaction with a client and failing to advise the client in writing that the client could seek the
4 advice of an independent lawyer of the client's choice and failing to give the client a reasonable
5 opportunity to do so; rule 3-700(A)(2) for failing, upon termination of employment, to take
6 reasonable steps to avoid reasonably foreseeable prejudice to clients; section 6090.5(a)(1) for
7 seeking an agreement, while acting as an attorney for a party, that Respondent's professional
8 misconduct would not be reported to a disciplinary agency; and section 6103 for violating or
9 disobeying a court order.

10 Respondent's failure to submit two quarterly reports constitutes multiple acts of
11 misconduct in this matter which is also an aggravating circumstance. (Standard 1.2(b)(ii).)

12 Respondent's failure to submit the quarterly report due July 10, 2004, after: (1) being
13 informed by Dineros that the Office of Probation had not received her first quarterly report; (2)
14 being advised to file the report immediately; and (3) Respondent told Dineros that she would fax
15 the report the day after their telephone conversation and mail the original to Dineros, is an
16 aggravating circumstance as it demonstrates indifference toward rectification of or atonement for
17 the consequences of her misconduct. (Standard 1.2(b)(v).)

18 MITIGATING CIRCUMSTANCES

19 Respondent did not participate either in propria persona or through counsel in this
20 disciplinary proceeding. No mitigating evidence was therefore offered on Respondent's behalf or
21 received into evidence, and none can be gleaned from this record.

22 DISCUSSION

23 Protection of the public and rehabilitation of the attorney are the primary goals of
24 disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr.
25 445, 452; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) In
26 determining the level of discipline, the Court must consider the "total length of stayed suspension
27 which could be imposed as an actual suspension and the total amount of actual suspension earlier
28 imposed as a condition of the discipline at the time probation was granted." (*In the Matter of*

1 *Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

2 Section 6093 authorizes the revocation of probation for a violation of a probation
3 condition, and standard 1.7 requires that the court recommend a greater discipline in this matter
4 than that imposed in the underlying disciplinary proceeding. However, the extent of the
5 discipline to recommend is dependent, in part, on the seriousness of the probation violation and
6 Respondent's recognition of her misconduct and her efforts to comply with the conditions. (*In*
7 *the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) Furthermore, "[t]he violation
8 of a probation condition significantly related to the attorney's prior misconduct merits the
9 greatest discipline, especially if the violation raises a serious concern about the need to protect
10 the public or shows the attorney's failure to undertake steps toward rehabilitation." (*In the*
11 *Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151.)

12 In this matter, the Court is concerned about Respondent's failure to comply with the
13 above-mentioned conditions of her probation, as well as her failure to participate in this
14 disciplinary proceeding. "[A] probation 'reporting requirement permits the State Bar to monitor
15 [an attorney probationer's] compliance with professional standards.'" (*In the Matter of Weiner*
16 (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40
17 Cal.3d 595, 605.) In addition, "an attorney probationer's filing of quarterly probation reports is
18 an important step towards the attorney's rehabilitation." (*In the Matter of Weiner, supra*, 3 Cal.
19 State Bar Ct. Rptr. at p. 763.) The Court notes that Respondent has been found culpable of
20 failing to submit the first two quarterly reports which were due, which suggests to this Court that
21 Respondent has not taken even the simplest first steps towards rehabilitation. Her failure to offer
22 this Court any explanation for her failing to submit these two quarterly reports is also of great
23 concern to this Court.

24 In the disciplinary matter which underlies this probation proceeding, Respondent was
25 suspended from the practice of law for three years; the execution of said suspension was stayed;
26 and Respondent was placed on probation for four years subject to certain conditions of probation,
27 including that she be actually suspended for two years and until she has shown proof satisfactory
28 to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the

1 general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional
2 Misconduct.

3 The State Bar recommends in this matter, inter alia, that Respondent be actually
4 suspended for three years as a result of her probation violations. The Court concurs.⁹ However,
5 based on the magnitude of the misconduct and discipline imposed in the underlying disciplinary
6 matter, as well as the nature of the probation violations of which Respondent has been found
7 culpable in this proceeding and her failure to participate in this matter, the Court finds that
8 substantial discipline is warranted.

9 Accordingly, the Court finds good cause to GRANT the State Bar's motion to revoke
10 Respondent's probation.

11 **DISCIPLINE RECOMMENDATION**

12 The Court hereby recommends to the Supreme Court that Respondent's probation in
13 Supreme Court matter S121073 (State Bar Court Case Nos. 00-O-13521, etc.) be revoked, that
14 the previous stay of execution of the suspension in Supreme Court matter S121073 (State Bar
15 Court Case Nos. 00-O-13521, etc.) be lifted, and that Respondent SUE E. CASTRELLON be
16 actually suspended from the practice of law for three years and until she has shown proof
17 satisfactory to the State Bar Court of her rehabilitation, fitness to practice and learning and ability
18 in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for
19 Professional Misconduct.

20 It is not recommended that Respondent be ordered to comply with the requirements of
21 rule 955 of the California Rules of Court as she filed an affidavit of compliance with rule 955 in
22 connection with Supreme Court matter S121073 and has remained actually suspended from the
23

24 ⁹The Court notes that the State Bar did not request that Respondent's suspension continue
25 until she has shown proof satisfactory to the State Bar Court of her rehabilitation, fitness to
26 practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for
27 Attorney Sanctions for Professional Misconduct, and that the stayed suspension in the underlying
28 disciplinary matter did not include such a requirement. However, based on *In the Matter of Luis*
(Rev. Dept., Case No. 03-PM-03298, Dec. 10, 1990, typed opn. at 1, 14), and the facts in this
matter, the Court finds that it is appropriate to recommend that Respondent comply with the
requirements of standard 1.4(c)(ii) before she can be relieved of her actual suspension.

1 practice of law since March 27, 2004, the effective date of her discipline in the underlying
2 disciplinary matter.¹⁰

3 It is not recommended that Respondent be ordered to take and pass the Multistate
4 Professional Responsibility Examination as she was ordered to do so in Supreme Court Case No.
5 S121073 (State Bar Court Case Nos. 00-O-13521, etc.) and still remains under the requirement to
6 take and pass the examination.

7 **ORDER REGARDING INACTIVE ENROLLMENT**

8 The State Bar requests that Respondent be involuntarily enrolled inactive pursuant to
9 section 6007(d). The requirements of section 6007(d)(1) have been met: Respondent is subject
10 to a stayed suspension; she has been found to have violated probation conditions; and it has been
11 recommended that Respondent be actually suspended due to said violations.

12 IT IS THEREFORE ORDERED that Respondent SUE E. CASTRELLON be
13 involuntarily enrolled as an inactive member of the State Bar of California pursuant to section
14 6007(d). This enrollment shall be effective five days after service of this order.

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

17 IT IS FURTHER RECOMMENDED THAT Respondent's actual suspension in this
18 matter commence as of the date of her inactive enrollment pursuant to this order. (Section
19 6007(d)(3).)

20 **COSTS**

21 It is further recommended that costs be awarded to the State Bar pursuant to section
22 6086.10, and that those costs be payable in accordance with section 6140.7.

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25 Dated: February 1, 2005

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27 _____
28 ROBERT M. TALCOTT
Judge of the State Bar Court

¹⁰Pursuant to Evidence Code section 452(d), the Court takes judicial notice of its records.

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 February 4, 2005, I deposited a true copy of the following document(s):

**ORDER GRANTING MOTION TO REVOKE PROBATION AND ORDER
OF INVOLUNTARY INACTIVE ENROLLMENT, filed February 4, 2005**

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:

**Sue E. Castrellon
2220 Otay Lakes Rd #502
Chula Vista, CA 91915**

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

JAYNE KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 4, 2005**.



Tammy R. Cleaver
Case Administrator
State Bar Court