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PUBLIC MATTER

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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

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In the Matter of
ANN T. GARRETT,
Member No. 70923,
A Member of the State Bar.

Case No. 05-PM-03468-JMR
**ORDER GRANTING MOTION TO
REVOKE PROBATION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT**

I. 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 Ann T. Garrett ("respondent") imposed by the Supreme Court in its order filed on May 23, 2005, in Supreme Court Case No. S132087 (State Bar Court Case No(s). 02-O-16089; 03-O-00602 (Cons.)) ("motion").

The State Bar requests that respondent's probation be revoked, and that respondent be actually suspended for 90 days and until she makes specified restitution and until she "complies with fee arbitration conditions previously stayed by order of the Supreme Court issued on May 23, 2005." (State Bar's Motion filed July 28, 2005).¹ The State Bar also requests that respondent

¹A thorough review of the motion reveals that the State Bar is under the erroneous impression that certain fee arbitration requirements were a part of respondent's stayed suspension in Case No. S132087 (State Bar Court Case Nos. 02-O-16089; 03-O-00602 (cons.)). Although such requirements were contained in the parties' Stipulation Re Facts, Conclusions of Law and Disposition executed by the parties in December 2004, the court, prior to approving the stipulation on January 20, 2005, modified the stipulation to delete the fee arbitration requirements attached to both the stayed and actual suspension periods. (Exhibit 2.) As such, the court is unable to recommend in this matter that respondent's actual suspension continue until she complies with certain fee arbitration requirements. (Rules Proc. of State Bar, rule 562.)



1 be ordered to comply with rule 955 of the California Rules of Court ("rule 955"), and that
2 respondent be involuntarily enrolled as an inactive member of the State Bar pursuant to Business
3 and Professions Code section 6007(d).²

4 For the reasons stated below, the State Bar's motion to revoke respondent's probation is
5 granted, as is its request to involuntarily enroll respondent to inactive status. The court
6 recommends that respondent's probation as previously ordered in Case No. S132087 (State Bar
7 Court Case Nos. 02-O-16089; 03-O-00602 (cons.)) be revoked; that the previous stay of
8 execution of the suspension in the order be lifted; that respondent be suspended from the practice
9 of law for two years and until she complies with specified restitution requirements, that
10 execution of said suspension be stayed, and that respondent be placed on probation for two years
11 on conditions including that she be actually suspended from the practice of law for six months
12 and until she makes specified restitution and provides satisfactory proof thereof to the Office of
13 Probation. The court will also recommend that respondent be ordered to comply with rule 955
14 and will order that respondent be involuntarily enrolled as an inactive member of the State Bar
15 pursuant to section 6007(d).

16 II. PERTINENT PROCEDURAL HISTORY

17 On July 28, 2005, the State Bar filed with the State Bar Court a motion to revoke
18 respondent's probation, accompanied by the declarations of Lydia Dineros and Jayne Kim and
19 Exhibits 1-3 in support of said motion. A copy of the motion, the declarations of Lydia Dineros
20 and Jayne Kim, Exhibits 1-3 and a Probation Revocation Response form were properly served
21 upon respondent on July 26, 2005, by certified mail, return receipt requested, addressed to
22 respondent at her latest address shown on the official membership records of the State Bar
23 ("official address") pursuant to section 6002.1, subdivision (c), and rules 60 and 563(a) of the
24 Rules of Procedure of the State Bar of California ("Rules of Procedure").³ There is no evidence
25

26 ²Unless otherwise indicated, all further references to section(s) refer to provisions of the
27 California Business and Professions Code.

28 ³The certified copy of respondent's address history dated July 6, 2005, which is attached
as part of Exhibit 1, is not competent evidence to establish that documents served after July 6,

1 as to whether the copy of the motion and supporting documents was returned to the State Bar by
2 the U.S. Postal Service as undeliverable or for any other reason.

3 On August 9, 2005, a Notice of Assignment and Notice of Initial Status Conference was
4 filed setting a status conference for August 29, 2005. A copy of said notice was properly served
5 upon respondent on August 9, 2005, by first-class mail, postage fully prepaid, addressed to
6 respondent at her official address and was not returned to the State Bar Court by the U.S. Postal
7 Service as undeliverable or for any other reason.

8 The court held a status conference in this matter on August 29, 2005. Respondent failed
9 to appear either in person or through counsel at the time of the status conference. On August 30,
10 2005, the court issued a Status Conference Order, setting forth that respondent must file a
11 response immediately or the motion would be submitted without her response. A copy of said
12 order was properly served upon respondent on August 30, 2005, by first-class mail, postage fully
13 prepaid, addressed to respondent at her official address and was not returned to the State Bar
14 Court by the U.S. Postal Service as undeliverable or for any other reason.

15 Nevertheless, respondent did not file a response to the State Bar's motion to revoke her
16 probation.

17 On September 29, 2005, as respondent had not filed a response to the motion to revoke
18 her probation and the time for doing so had expired, the court issued a Submission Order taking
19 this matter under submission for decision as of October 17, 2005, if no further evidence was
20 received. The order noted that the State Bar had not requested a hearing in this matter. A copy
21 of said order was properly served upon respondent by first-class mail, postage fully prepaid,
22 addressed to respondent at her official address and was not returned to the State Bar Court by the
23 U.S. Postal Service as undeliverable or for any other reason. No further evidence was received,
24 and this matter was taken under submission for decision on October 17, 2005.

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27 2005, were properly served upon respondent. The court therefore takes judicial notice of the
28 State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h),
which establishes that effective January 21, 1992, respondent's official address has been, and
remains, as of the date of this decision, 1220 H St. #204, Sacramento, CA 95814.

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III. FINDINGS OF FACT⁴

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 22, 1976, and has been a member of the State Bar at all times pertinent hereto.

B. Probation Violations

In December 2004, respondent and the Office of the Chief Trial Counsel of the State Bar of California executed a Stipulation Re Facts, Conclusions of Law and Disposition in State Bar Court Case No. 02-O-16089, et al. ("stipulation").

On January 20, 2005, the court issued an order modifying the stipulation, approving the stipulation as modified, and recommending the discipline set forth in the stipulation to the Supreme Court.

On or about March 23, 2005, Jayne Kim, Supervising Attorney for the State Bar's Office of Probation ("Ms. Kim"), received a telephone call from Jane Hunter ("Ms. Hunter"). During that telephone call, Ms. Hunter informed Ms. Kim that respondent had not contacted Ms. Hunter regarding fee arbitration proceedings.

That same day, Ms. Kim reviewed the State Bar Court Hearing Department's Order Approving Stipulation, filed on January 20, 2005, in State Bar Court Case No. 02-O-16089, et al. According to the order, respondent was required to offer binding fee arbitration to Ms. Hunter, in writing, within 60 days from the date the State Bar Court approved the stipulation.

On that same day, after reviewing the Hearing Department order filed on January 20, 2005, Ms. Kim caused a letter to be mailed to respondent stating, in pertinent part:

... I would like to inform you that Jane Hunter recently notified this office that you have not yet contacted her regarding fee arbitration as provided for in Hearing Department's Order Approving Stipulation filed on January 20, 2005. [¶] As you know, one of the conditions of probation you agreed to in the

⁴These findings of fact are based on the admitted factual allegations contained in the State Bar's motion to revoke respondent's probation, the declarations of Lydia Dineros and Jayne Kim, State Bar Exhibits 1-3 attached to said motion, and the cited statutes and court rules. (Rules Proc. of State Bar, rule 563(b)(3).) The declarations of Lydia Dineros and Jayne Kim and State Bar Exhibits 1-3 are admitted into evidence pursuant to rule 563(e) of the Rules of Procedure.

1 aforementioned stipulation was to offer Ms. Hunter, in writing by
2 certified mail, to submit to fee arbitration. This written offer was
3 to have been made within 60 days of the signed stipulation. . . . [¶]
4 Assuming that the Supreme Court issues an order imposing
5 discipline as recommended in the aforementioned stipulation, you
6 will be in violation of your probation for failing to comply with the
7 fee arbitration conditions. I suggest that you take the necessary
8 steps to come into compliance prior to the effective date of your
9 discipline.

6 (Exhibit 3, emphasis in original.) Enclosed with Ms. Kim's letter to respondent was a copy of
7 the fee arbitration conditions as outlined in the Hearing Department's order filed January 20,
8 2005. This letter and supporting documents were mailed to respondent via first-class mail,
9 addressed to respondent's official address. At no time was this letter returned to Ms. Kim from
10 the U.S. Postal Service as undeliverable.

11 Respondent did not contact Ms. Kim in response to this letter.

12 By order dated May 23, 2005, the Supreme Court imposed discipline on respondent in
13 Supreme Court Case No. S132087 (State Bar Court Case Nos. 02-O-16089; 03-O-00602 (cons.)).
14 Respondent was suspended from the practice of law for two years and until she complies with the
15 requirements of standard 1.4(c)(ii) and until she makes and provides satisfactory proof of
16 specified restitution; the execution of said suspension was stayed; and respondent was placed on
17 probation for two years on condition that she be actually suspended for 30 days and until she
18 makes and furnishes satisfactory proof of specified restitution. Respondent was also ordered to
19 comply with other conditions of probation.

20 The Supreme Court order became effective on June 22, 2005, thirty days after it was
21 entered. (Cal. Rules of Court, rule 953(a).)⁵

22
23 ⁵No proof was offered to establish that respondent had notice of the Supreme Court's
24 order. However, the Clerk of the Supreme Court was required to promptly send a copy of the
25 order to respondent once it was filed. (Cal. Rules of Court, rule 29.4(a).) Also, it is presumed
26 that official duties have been regularly performed unless the party against whom the presumption
27 operates *proves* otherwise. (Evid. Code, §§ 606, 660, 664; *In Re Linda D.* (1970) 3 Cal.App.3d
28 567, 571.) Thus, because respondent has not proved otherwise, the court must find the Supreme
29 Court Clerk properly sent respondent a copy of the order promptly after it was filed. (*Ibid.*)
30 Therefore, as there is no evidence in the record that would support a finding to the contrary, the
31 court finds that respondent actually received that copy of the order. (Evid. Code, §§ 604, 630,
32 641.)

1 Pursuant to the Supreme Court order, respondent was ordered to comply with the
2 following terms and conditions of probation, among others:

3 (1) within 60 days from the date of the State Bar Court's Order Approving Stipulation,
4 make a written offer to participate in binding fee arbitration with Jane Hunter;

5 (2) within the first 30 days of probation, provide proof to the Office of Probation that
6 respondent returned to her client trust account the amount of \$11,320, which represents the
7 disputed fee amount with Ms. Hunter;⁶ and

8 (3) answer fully, promptly and truthfully any inquiries of the Office of Probation, subject
9 to assertion of applicable privileges, which are directed to respondent personally or in writing
10 relating to whether she is complying or has complied with the probation conditions.⁷

11 On June 2, 2005, Lydia Dineros, Probation Deputy for the Office of Probation, mailed to
12 respondent a copy of her disciplinary order imposing probation and a letter confirming certain
13 terms and conditions of probation, including suspension. In her letter, Ms. Dineros advised
14 respondent that she was required to offer binding fee arbitration to Jane Hunter by March 21,
15 2005, and that she was required to provide proof that she deposited \$11,320 into her client trust
16 account by July 22, 2005. The June 2, 2005, letter was not returned to the State Bar as
17 undeliverable.

18 On June 3, 2005, Ms. Dineros telephoned respondent and reminded her of her fee
19 arbitration conditions. At that time, Ms. Dineros spoke with respondent and respondent stated
20 that she would "take care of it" as soon as she received Ms. Dineros's initial probation letter
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22 ⁶Although the motion alleges that respondent was also to provide satisfactory proof to the
23 Office of Probation of compliance with fee arbitration conditions within 90 days from the date of
24 the State Bar Court's Order Approving Stipulation, a thorough review of the stipulation and the
25 order approving same reveals that this requirement was deleted by the State Bar Court prior to
the court's approval of the stipulation.

26 ⁷Although respondent's failure to answer inquiries from the Office of Probation was not
27 specifically addressed in that portion of the State Bar's motion entitled "Memorandum of Points
28 and Authorities," the court finds no due process concerns in this matter, as the notice portion of
the motion sets forth that the motion is based, in part, upon respondent's failure to respond
promptly to inquiries from the Office of Probation regarding probation compliance.

1 dated June 2, 2005.⁸

2 On June 22, 2005, Ms. Dineros received a voice mail message from Jane Hunter stating
3 that respondent had not contacted her about fee arbitration. That same day, Ms. Dineros
4 telephoned respondent and left her a voice mail message requesting that she return Ms. Dineros's
5 telephone call. In her message to respondent, Ms. Dineros also stated that Ms. Hunter had
6 notified Ms. Dineros that respondent had not contacted her regarding fee arbitration.

7 Respondent did not return Ms. Dineros's telephone call of June 22, 2005.

8 On June 23, 2005, Ms. Dineros mailed respondent a letter reminding her that she was
9 required to offer binding fee arbitration to Ms. Hunter by March 21, 2005. In her letter, Ms.
10 Dineros requested that respondent submit proof of compliance no later than June 30, 2005.⁹ The
11 June 23, 2005, letter was not returned to the State Bar as undeliverable.

12 As of July 25, 2005, respondent has not responded to any of the aforementioned letters or
13 otherwise provided proof of compliance with her fee arbitration condition relating to Ms. Hunter.

14 Respondent failed to comply with the terms of her probation in that she has not: (1) made
15 a written offer to participate in binding fee arbitration with Jane Hunter within 60 days from the
16 date of the State Bar Court's Order Approving Stipulation, (2) provided proof to the Office of
17 Probation that she returned, to her client trust account, the amount of \$11,320, which represents
18 the disputed fee amount with Ms. Hunter, within the first 30 days of probation; and
19 (3) responded to Ms. Dineros's telephone call of June 22, 2005, and her letter of June 23, 2005.¹⁰

21 ⁸Declaration of Lydia Dineros.

22 ⁹Although respondent was not required to submit proof of compliance to the Office of
23 Probation as part of the order imposing discipline, respondent was obligated to respond to the
24 letter of the Office of Probation and to advise the Office of Probation that she had timely written
25 Ms. Hunter and offered to participate in binding fee arbitration. Respondent's failure to take any
26 action in response to this letter is a violation of the probation condition requiring respondent to
27 answer fully, promptly and truthfully any inquiries of the Office of Probation directed to
28 respondent relating to whether respondent is complying or has complied with the probation
conditions.

¹⁰The court will not find respondent culpable of failing to respond to any inquiries of the
Office of Probation made before June 22, 2005, the effective date of the Supreme Court order

1 **IV. CONCLUSIONS OF LAW**

2 Bad faith is not a requirement for a finding of culpability in a probation violation matter;
3 “instead, a ‘general purpose or willingness’ to commit an act or permit an omission is sufficient.
4 (Citations.)” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)
5 Pursuant to section 6093(c) and rule 561 of the Rules of Procedure, the court concludes that the
6 State Bar has demonstrated by a preponderance of the evidence that respondent wilfully violated
7 certain conditions of probation ordered by the Supreme Court by failing to: (1) make a written
8 offer to participate in binding fee arbitration with Jane Hunter within 60 days from the date of the
9 State Bar Court’s Order Approving Stipulation, (2) provide proof to the Office of Probation that
10 she returned to her client trust account the amount of \$11,320, which represents the disputed fee
11 amount with Ms. Hunter, within the first 30 days of probation; and (3) respond to Ms. Dineros’s
12 telephone call of June 22, 2005, and her letter of June 23, 2005. These conclusions warrant the
13 revocation of probation as provided by section 6093(b).

14 **V. LEVEL OF DISCIPLINE**

15 **A. Aggravating Circumstances**

16 In aggravation, respondent has a prior record of discipline. (Rules Proc. of State Bar, tit.
17 IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i) (“standard”).)¹¹ On May
18 23, 2005, the Supreme Court filed an order in Case No. S132087 (State Bar Court Case Nos. 02-
19 O-16089; 03-O-00602 (cons.)). Respondent was suspended from the practice of law for two
20 years and until she complies with the requirements of standard 1.4(c)(ii) and until she makes and
21 provides satisfactory proof of specified restitution; the execution of said suspension was stayed;
22 and respondent was placed on probation for two years on condition that she be actually
23 suspended for 30 days and until she makes and furnishes satisfactory proof of specified
24 restitution. Respondent was found culpable in this prior disciplinary matter of misconduct
25 _____
26 imposing discipline in this matter.

27 ¹¹The State Bar did not properly submit respondent’s prior record of discipline in this
28 matter. Therefore, pursuant to Evidence Code section 452, subdivision (d), the court takes
judicial notice of respondent’s prior record of discipline.

1 involving two clients. In the first client matter, respondent was found culpable of wilfully
2 violating rule 3-700(D)(2) of the Rules of Professional Conduct of the State Bar of California¹²
3 for failing to promptly refund any part of an unearned fee; rule 4-100(B)(3) for failing to render
4 appropriate accounts to a client; and section 6068, subdivision (i), for failing to cooperate in a
5 disciplinary investigation. In the second client matter, respondent was found culpable of wilfully
6 violating rule 4-100(A)(2) for not maintaining disputed trust funds in her client trust account;
7 rule 3-700(D)(1) for failing to release promptly to a client all the client's papers and property at
8 the client's request and upon termination of employment; and section 6068, subdivision (i), for
9 failing to cooperate in a disciplinary investigation.

10 Further aggravating circumstances in the instant matter include the fact that respondent
11 engaged in multiple acts of misconduct in this matter. (Standard 1.2(b)(ii).)

12 Respondent's failure to comply with certain conditions of her probation as set forth
13 above, after being reminded of her obligation to do so by the Office of Probation, demonstrates
14 indifference toward rectification of or atonement for the consequences of her misconduct.
15 (Standard 1.2(b)(v).)

16 Respondent's failure to participate in the August 30, 2005 status conference and her
17 failure to file a response to the motion are also aggravating circumstances. (Standard 1.2(b)(vi).)

18 **B. Mitigating Circumstances**

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

22 **C. 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
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27
28 ¹²Unless otherwise indicated, all further references to rules are to the Rules of
Professional Conduct of the State Bar of California.

1 determining the level of discipline, the court must consider the “total length of stayed suspension
2 which could be imposed as an actual suspension and the total amount of actual suspension earlier
3 imposed as a condition of the discipline at the time probation was granted.” (*In the Matter of*
4 *Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

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

15 In this matter, the court is concerned about respondent’s failure to comply with the above-
16 mentioned conditions of her probation, as well as her failure to participate in this disciplinary
17 proceeding. The court notes that respondent participated in her prior disciplinary proceeding and
18 even entered into a stipulation in the underlying disciplinary matter. In addition, respondent was
19 reminded on several occasions of certain probation conditions regarding fee arbitration and, on
20 one such occasion, advised the Office of Probation that she would “take care of it.”

21 Respondent was therefore well aware of the terms and conditions of her probation.
22 Nevertheless, respondent failed to: (1) make a written offer to participate in binding fee
23 arbitration with Jane Hunter within 60 days from the date of the State Bar Court’s Order
24 Approving Stipulation; (2) provide proof to the Office of Probation that she returned to her client
25 trust account the amount of \$11,320 within the first 30 days of probation; and (3) respond to Ms.
26 Dineros’s telephone call of June 22, 2005, and her letter of June 23, 2005. Respondent’s failure
27 to provide proof that she has returned the disputed funds to her trust account and her failure to
28 write to Ms. Hunter and offer binding fee arbitration are of special concern to this court, as these

1 probation conditions were specifically related to respondent's prior misconduct and demonstrate
2 that respondent has not taken steps towards rehabilitation.

3 As a result of respondent's probation violations, the State Bar recommends in this matter
4 that respondent be actually suspended for 90 days and until she makes specified restitution and
5 until she complies with fee arbitration conditions. However, given the nature of the probation
6 conditions which were violated, and respondent's failure to participate in this proceeding and
7 offer any explanation for her non-compliance with her probation conditions, the court finds that
8 greater discipline than that recommended by the State Bar is warranted.

9 Accordingly, the court finds good cause to GRANT the State Bar's motion to revoke
10 respondent's probation and recommends to the Supreme Court the imposition of the discipline
11 set forth below.

12 VI. DISCIPLINE RECOMMENDATION

13 The court hereby recommends that respondent's probation as ordered in Supreme Court
14 Case No. S132087 (State Bar Court Case Nos. 02-O-16089; 03-O-00602 (cons.)) be revoked,
15 that the previous stay of execution of the suspension in that order be lifted, and that respondent
16 ANN T. GARRETT be suspended from the practice of law for two years and until she complies
17 with the restitution requirements set forth below, that execution of said suspension be stayed, and
18 that respondent be placed on probation for two years on the following conditions:

19 1. Respondent will be actually suspended from the practice of law for the first six months
20 of probation and until she makes restitution to Wendy LaRue (or the Client Security Fund, if
21 appropriate), in the amount of \$500 plus 10% interest per annum from December 31, 2001, and
22 provides satisfactory proof thereof to the State Bar's Office of Probation;

23 2. During the probation period, respondent shall comply with the State Bar Act and the
24 Rules of Professional Conduct;

25 3. Within ten (10) days of any change, respondent shall report to the Membership
26 Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and
27 to the State Bar's Office of Probation, all changes of information, including current office
28 address and telephone number, or if no office is maintained, the address to be used for State Bar

1 purposes, as prescribed by section 6002.1 of the Business and Professions Code;

2 4. Respondent shall submit written quarterly reports to the Office of Probation on each
3 January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of
4 perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules
5 of Professional Conduct, and all conditions of probation during the preceding calendar quarter or
6 portion thereof. If the first report will cover less than thirty (30) days, that report shall be
7 submitted on the next following quarter date, and cover the extended period.

8 In addition to all quarterly reports, a final report, containing the same information, is due
9 no earlier than twenty (20) days before the last day of the probation period and no later than the
10 last day of the probation period;

11 5. Subject to the assertion of applicable privileges, respondent shall answer fully,
12 promptly, and truthfully, any inquiries of the State Bar's Office of Probation which are directed
13 to respondent personally or in writing, relating to whether respondent is complying or has
14 complied with the conditions contained herein;

15 6. Reporting requirements.

16 A. If respondent possesses client funds at any time during the period covered
17 by a required quarterly report, respondent shall file with each required
18 report a certificate from respondent and/or a certified public accountant or
19 other financial professional approved by the Office of Probation, certifying
20 that: respondent has maintained a bank account in a bank authorized to do
21 business in the State of California, at a branch located within the State of
22 California, and that such account is designated as a "Trust Account" or
23 "Client's Funds Account"; and respondent has kept and maintained the
24 following:

- 25 i. a written ledger for each client on whose behalf funds are held that
26 sets forth:
27 1. the name of such client,
28 2. the date, amount, and source of all funds received on behalf

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of such client,

3. the date, amount, payee and purpose of each disbursement made on behalf of such client, and

4. the current balance for such client;

ii. a written journal for each client trust fund account that sets forth:

1. the name of such account,

2. the date, amount, and client affected by each debit and credit, and

3. the current balance in such account.

iii. all bank statements and canceled checks for each client trust account; and

iv. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:

1. each item of security and property held;

2. the person on whose behalf the security or property is held;

3. the date of receipt of the security or property;

4. the date of distribution of the security or property; and

5. the person to whom the security or property was distributed.

B. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.

C. The requirements of this condition are in addition to those set forth in rule

1 4-100 of the Rules of Professional Conduct of the State Bar of California;

2 7. Within one (1) year of the effective date of the discipline herein, respondent shall
3 supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics
4 School Client Trust Accounting School, within the same period of time, given periodically by the
5 State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill
6 Street, Los Angeles, California, 90015, and passage of the test given at the end of that session,
7 unless respondent has already done so in connection with Supreme Court Case No. S132087
8 (State Bar Court Case Nos. 02-O-16089; 03-O-00602 (cons.)). Arrangements to attend Ethics
9 School Client Trust Accounting School must be made in advance by calling (213) 765-1287, and
10 paying the required fee. This requirement is separate from any Minimum Continuing Legal
11 Education Requirement ("MCLE"), and respondent will not receive MCLE credit for attending
12 Trust Accounting School. (Rules Proc. of State Bar, rule 3201);

13 8. Within one (1) year of the effective date of the discipline herein, respondent shall
14 provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics
15 School, given periodically by the State Bar at either 180 Howard Street, San Francisco,
16 California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage
17 of the test given at the end of that session, unless respondent has already done so in connection
18 with Supreme Court Case No. S132087 (State Bar Court Case Nos. 02-O-16089; 03-O-00602
19 (cons.)). Arrangements to attend Ethics School must be made in advance by calling (213) 765-
20 1287, and paying the required fee. This requirement is separate from any MCLE requirement,
21 and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State
22 Bar, rule 3201);

23 9. Fee Arbitration:

24 A. Within 30 days after the effective date of the Supreme Court's order
25 imposing discipline in this matter, respondent will offer to Jane Hunter, in
26 writing, by certified mail, return receipt requested, to submit the disputed
27 fee matter to arbitration under Business and Profession Code section 6200,
28 et seq., and will provide a copy of the written offer to the Office of

1 Probation within 15 days thereafter. Pursuant to section 6204, subdivision
2 (a), respondent will offer to be bound by the award. Failure to comply
3 with the client's arbitration request will be a probation violation.

4 B. Within 30 days after the effective date of the Supreme Court order
5 imposing discipline in this matter, respondent will return the disputed
6 amount of \$11,320 to her client trust account and provide satisfactory
7 proof thereof to the Office of Probation within 10 days thereafter.

8 C. If arbitration is requested, respondent will provide a copy of any final
9 award within 30 days of the award to the Office of Probation.

10 D. If respondent is ordered to pay any award to Jane Hunter, she will satisfy
11 the payment within 30 days of the determination of the award and provide
12 proof of such payment to the Office of Probation within 10 days after
13 payment.

14 If the period of actual suspension reaches or exceeds two years, it is further recommended
15 that respondent remain actually suspended until she has shown proof satisfactory to the State Bar
16 Court of her rehabilitation, fitness to practice and learning and ability in the general law pursuant
17 to standard 1.4(c)(ii).

18 It is not recommended that respondent be ordered to take and pass the Multistate
19 Professional Responsibility Examination ("MPRE"), as respondent was ordered to take and pass
20 the MPRE in Supreme Court Case No. S132087 (State Bar Court Case Nos. 02-O-16089; 03-O-
21 00602 (cons.)) and remains under an obligation to do so.

22 It is further recommended that respondent be ordered to comply with rule 955, California
23 Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within
24 thirty (30) and forty (40) days, respectively, from the effective date of the Supreme Court order
25 herein. **Wilful failure to comply with the provisions of rule 955 may result in revocation of**
26 **probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or**
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28

1 criminal conviction.¹³

2 **VII. ORDER REGARDING INACTIVE ENROLLMENT**

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

7 IT IS THEREFORE ORDERED that respondent ANN T. GARRETT be involuntarily
8 enrolled as an inactive member of the State Bar of California pursuant to section 6007(d). This
9 enrollment shall be effective five days after service of this order.

10 IT IS ALSO ORDERED that her inactive enrollment be terminated as provided by section
11 6007(d)(2).

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

14 **VIII. COSTS**

15 It is further recommended that costs be awarded to the State Bar pursuant to section
16 6086.10, and that those costs be payable in accordance with section 6140.7.

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20 Dated: November 14, 2005


JOANN M. REMKE
Judge of the State Bar Court

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¹³Respondent is required to file a rule 955(c) affidavit even if she has no clients.
(*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

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 San Francisco, on November 14, 2005, I deposited a true copy of the following document(s):

**ORDER GRANTING MOTION TO REVOKE PROBATION AND ORDER
OF INVOLUNTARY INACTIVE ENROLLMENT**

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

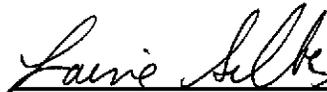
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**ANN TAYLOR GARRETT
1220 H ST #204
SACRAMENTO CA 95814**

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

TERRIE GOLDADE, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 14, 2005.**



Laine Silber
Case Administrator
State Bar Court