



FILED

MAR 06 2009

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 08-PM-14531-DFM
)	
LISA GERALDINE PROPSTER,)	ORDER GRANTING MOTION
)	TO REVOKE PROBATION &
Member No. 165059,)	ORDER OF INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **LISA GERALDINE PROPSTER** is charged with violating three of the seven conditions of probation imposed on her by the Supreme Court's order issued on December 20, 2007. (*In re Lisa G. Propster on Discipline*, case no. S157399 (State Bar Court case number 06-O-12120-DFM) [*Propster I*].)

The State Bar's Office of Probation (Office of Probation) is represented by Supervising Attorney Terrie Goldade. Even though respondent had actual knowledge of this proceeding, she failed to file a response to the motion to revoke her probation. Moreover, respondent did not otherwise appear or participate in this proceeding.

As discussed *post*, the court finds, by a preponderance of the evidence (Bus. & Prof. Code, § 6093, subd. (c); Rules Proc. of State Bar, rule 561), that respondent is culpable of the charged probation violations. Accordingly, the court grants the motion to revoke respondent's probation. In addition, the court recommends that respondent be actually suspended from the

practice of law for one year and that she be involuntarily enrolled as an inactive member of the State Bar. (Bus. & Prof. Code, § 6007, subd. (d)(1).)¹

II. Pertinent Procedural History

On November 24, 2008, the Office of Probation filed a motion to revoke respondent's probation and properly served a copy of the motion on respondent at her latest address shown on the official membership records of the State Bar by certified mail, return receipt requested. (§ 6002.1, subd. (c); Rules Proc. of State Bar, rules 60(a), 563(a); see also *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108 [service in a State Bar Court proceeding is deemed complete when mailed even if the attorney does not receive the pleading].)

On December 15, 2008, respondent attempted to file a response to the motion to revoke probation, but that pleading was rejected by the court's staff because of multiple defects. Thereafter, on January 7, 2009, respondent faxed a purported response to the court, but failed to provide an original document. On January 20, 2009, one of the court's case administrators sent, by overnight mail, a letter to respondent notifying her that her January 7, 2009, faxed response *had not been filed* because it did not contain an original, handwritten signature. (State Bar Ct. Rules of Prac., rule 1112(a)(3).) In that same letter, the case administrator instructed respondent to submit an original and two copies of her response to the motion. (State Bar Ct. Rules of Prac., rules 1110(e), 1112(a)(4).) Respondent made no subsequent effort to comply with this directive and no response by respondent was ever filed. This failure to file a response to the motion constitutes an admission by respondent of the factual allegations in the motion and in its supporting documents. (Rules Proc. of State Bar, rule 563(b)(3).)

¹ Unless otherwise noted, all further statutory references are to this code.

On February 4, 2009, the court took the motion to revoke probation under submission for decision without a hearing.

III. Findings of Fact and Conclusions of Law

Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 16, 1993, and has been a member of the State Bar since that time.

Probation Violations

In its December 20, 2007, order in *Propster I*, the Supreme Court placed respondent on one year's stayed suspension, two years' probation, and two months' actual suspension. In addition, the Supreme Court ordered respondent to take and pass the Multistate Professional Responsibility Examination (hereafter MPRE) within one year after the effective date of its order. It is notable that the Supreme Court imposed the discipline in *Propster I*, including each of the probation conditions, in accordance with a stipulation by respondent as to facts, conclusions of law, and disposition. Her misconduct here represents a failure by her to comply with her own agreement.

As noted *ante*, the Office of Probation here charges respondent with willfully violating three of the seven probation conditions imposed in *Propster I*.² Two of those three conditions required respondent (1) to contact the Office of Probation and schedule a meeting with her assigned probation deputy no later than February 18, 2008; and (2) to submit to the Office of Probation, no later than April 19, 2008, satisfactory evidence of her completion of at least three

² Bad faith is not a requirement for finding a probation violation. Instead, a general purpose or willingness to commit an act or permit an omission is sufficient. (*In the Matter of*

hours of minimum Continuing Legal Education approved courses in law office management, attorney client relations, or general legal ethics. The third of the three conditions required that respondent submit to the Office of Probation, on every January 10, April 10, July 10, and October 10, written probation reports stating, under penalty of perjury, whether she complied with the Rules of Professional Conduct of the State Bar, the State Bar Act (§ 6000, et seq.), and all the conditions of her probation during the preceding calendar quarter.

The record establishes that respondent willfully violated the foregoing three probation conditions. First, respondent did not contact the Office of Probation and schedule a meeting with her probation deputy until March 31, 2008, well more than a month past the February 18, 2008, deadline. Second, respondent has never submitted to the Office of Probation evidence of any completion by her of the required three hours of approved courses in law office management, attorney client relations, or general legal ethics. Third, respondent did not file her first quarterly probation report until July 14, 2008, more than three months after the April 10, 2008, due date. Finally, respondent has failed completely to file her third quarterly probation report, which was due on October 10, 2008.

Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)³

Potack (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

³ All further references to standard(s) are to this source.

Prior Discipline

Respondent, of course, has a prior record of discipline: In *Propster I*, respondent stipulated that she committed acts involving moral turpitude, dishonesty, or corruption in March 2006 when she filed an application with the State Bar's Membership Records Office to transfer from active to inactive membership status, effective retroactively back to January 1, 2006. In a handwritten letter attached to her application for retroactive inactive enrollment, respondent falsely stated that she had not practiced law in 2006 and that she had no cases. At the time that she asked to be transferred to inactive status, respondent knew that she had actually practiced law as counsel for the plaintiff in a lawsuit pending in the Orange County Superior Court from January 1, 2006, through March 15, 2006.

This prior discipline is an aggravating factor. (Std 1.2(b)(i).)

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Standard 1.2(e).) There is no evidence of any mitigating circumstance.

IV. Discussion

Public protection and attorney rehabilitation are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.) “[T]here has been a wide range of discipline imposed for probation violations from merely extending probation . . . to a revocation of the full amount of the stayed suspension and imposition of the amount as an actual suspension.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

In determining the appropriate level of discipline, the court is to consider, inter alia, the seriousness of the violations, respondent's efforts to comply with her probation conditions, respondent's recognition of her misconduct, and the total length of stayed suspension which could be imposed as an actual suspension. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) Moreover, the court must consider standard 1.7(a), which provides that, when an attorney has a prior record of discipline, "the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."

Ordinarily, attorney disciplinary probation is effective "only when the attorneys placed on probation are effectively monitored to ensure (1) that they do not again engage in misconduct and (2) that they are undertaking to conform their conduct to the ethical strictures of the profession. [Citations.]" (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.) Consequently, "an attorney probationer's filing of quarterly probation reports is an important step towards the attorney's rehabilitation. [Citations.]" (*Ibid.*) In addition, an attorney's filing of quarterly probation reports is an important means of protecting the public because it permits "the State Bar to monitor [the attorney's] compliance with the State Bar Act and Rules of Professional Conduct. [Citation.]" (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 705.)

The Supreme Court's disciplinary order in *Propster I* provided respondent with an opportunity to reform her conduct to the ethical strictures of the profession. Her conduct

subsequent to that order demonstrates that she is indifferent both to her duty to obey Supreme Court disciplinary orders and to her need to rehabilitate her conduct. Her failure to comply with the conditions of her probation “demonstrates a lapse of character and a disrespect for the legal system that directly relate to [her] fitness to practice law and serve as an officer of the court. [Citations omitted.]” (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) In short, respondent's continued unwillingness and/or inability to comply with her probation conditions raises serious public protection concerns.

Respondent's compliance with her probation conditions is an integral step in establishing her rehabilitation. Respondent has failed to take her disciplinary probation seriously and has not undertaken the basic rehabilitative steps contained within her probation conditions. Accordingly, respondent's probation violations require the imposition of actual suspension.

The State Bar contends that it is necessary and appropriate that this court actually suspend respondent for the full one-year period of the previously stayed suspension. This court agrees. The case of *In the Matter of Howard, supra*, 2 Cal. State Bar Ct. Rptr. 445 is instructive. In *Howard*, the attorney was placed on one year's actual suspension because he failed to file two probation reports, failed to deliver a former client's personal financial records to an accountant, and failed to otherwise establish that he had complied with a prior civil court order to turn over files and financial records to the former client. Like here, the disciplined attorney there also defaulted in the probation revocation proceeding.

In short, the court concludes that a one-year actual suspension is the appropriate level of discipline to recommend in the present proceeding. This conclusion is further supported by the fact that, on February 9, 2009, the Review Department filed an order placing respondent on

actual suspension because she failed to take and pass the MPRE within the time period set forth in the Supreme Court's December 20, 2007, order in *Propster I*.⁴ While respondent's actual suspension for not passing the MPRE is not a prior record of discipline under standard 1.2(b)(i) (*In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 331; *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 531-532), it is nonetheless another indication that respondent is unwilling and/or unable to comply with her professional obligations. Accordingly, it is relevant to this court's determination of the appropriate level of discipline to recommend to the Supreme Court in this proceeding. (*Ibid.*)

V. Recommended Discipline

The court recommends that the probation imposed on respondent **LISA GERALDINE PROPSTER** in the Supreme Court's December 20, 2007, order in case number S157399 (State Bar Court case number 06-O-12120-DFM) be revoked; that the stay of execution of the one-year suspension be lifted; that respondent be actually suspended from the practice of law in the State of California for one year (with credit given for the period of her involuntary inactive enrollment under this court's order of inactive enrollment); and that she again be placed on probation for two years on the following conditions:

1. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
2. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current office address and telephone number or, *if no office*

⁴ The court sua sponte takes judicial notice of this Review Department order and that respondent remains on actual suspension for failing to pass the MPRE.

is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

3. Within 30 days from the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
4. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation (reporting dates). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of her probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

- (i) In the first report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and
 - (ii) In each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period. During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (ii) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.
5. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.
6. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

VI. Rule 9.20, MPRE, and Costs

The court recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30

and 40 calendar days, respectively, after the effective date of the Supreme Court's order in this matter.⁵

Respondent will still remain on actual suspension under the Review Department's February 9, 2009, order until she takes and passes the MPRE. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Accordingly, the court **does not recommend** that respondent be ordered to take and pass the MPRE again.

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. Order of Inactive Enrollment

The requirements for involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (d)(1), have been met. Therefore, the court orders that **LISA GERALDINE PROPSTER** be involuntarily enrolled as an inactive member of the State Bar under section 6007, subdivision (d)(1), effective three days after service of this order by mail (Rules Proc. of State Bar, rule 564). Unless otherwise ordered by the State Bar Court or the Supreme Court, respondent's involuntary inactive enrollment under this order will terminate, without the necessity of further court order, on the earlier of the effective date of the Supreme Court order in this matter or one year after her involuntary inactive enrollment commences. (See

//

//

⁵ Respondent is required to file a rule 9.20(c) affidavit even if she has no clients. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Bus. & Prof. Code, § 6007, subd. (d)(2); Rules Proc. of State Bar, rule 564.)

Dated: March 6, 2009.

A handwritten signature in black ink, appearing to read "Donald F. Miles", written over a horizontal line.

DONALD F. MILES
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 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 Los Angeles, on March 6, 2009, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION TO REVOKE PROBATION & ORDER OF
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 Los Angeles, California, addressed as follows:

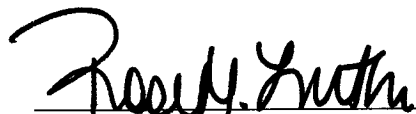
LISA G. PROPSTER
515 LANDS END WAY #172
OCEANSIDE, CA 92054

LISA G. PROPSTER
5830 37TH STREET
WHEATRIDGE, CO 80212

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

TERRIE GOLDADE, ESQ., Office of Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 6, 2009.



Rose Luthi
Case Administrator
State Bar Court