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STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 08-PM-14852-PEM
	)	
<b>W. IAIN ELDER LEVIE</b>	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE PROBATION AND ORDER OF</b>
<b>Member No. 152175</b>	)	<b>INACTIVE ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this probation revocation proceeding, respondent **W. Iain Elder Levie** (“respondent”) is charged with violating his probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (“Office of Probation”) seeks, among other things, to revoke his probation, to impose upon respondent the entire period of suspension previously stayed, and to involuntarily enroll respondent as an inactive member of the State Bar.

The court finds, by preponderance of the evidence, that respondent has violated his probation conditions and hereby grants the Office of Probation’s motion to revoke. As discussed *post*, the court recommends, among other things, that respondent’s probation be revoked, that the previously stayed suspension be lifted, and that respondent be actually suspended from the practice of law for 18 months and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

## **II. Pertinent Procedural History**

On December 19, 2008, the Office of Probation filed and properly served a motion to revoke probation on respondent, pursuant to Rules of Procedure of the State Bar of California (“Rules of Procedure”), rules 560, et seq. A copy of said motion was sent to respondent’s official membership records address<sup>1</sup> by recorded delivery.<sup>2</sup>

On January 12, 2009, the court issued a notice of assignment relating to the present matter. That same day, a copy of this notice was properly served on respondent at his official membership records address. Said copy was not subsequently returned as undeliverable or for any other reason.

Respondent did not file a response, as required by rule 563(b) of the Rules of Procedure. The court ultimately took this matter under submission on February 2, 2009. That same day, a copy of the court’s submission order was properly served on respondent at his official membership records address. Said copy was not subsequently returned as undeliverable or for any other reason.

## **III. Findings of Fact and Conclusions of Law**

All factual allegations contained in the motion to revoke probation and supporting documents are deemed admitted upon respondent’s failure to file a response. (Rules Proc. of State Bar, rule 563(b)(3).)

### **A. Jurisdiction**

Respondent was admitted to practice law in California on May 10, 1991, and has since been a member of the State Bar of California.

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<sup>1</sup> Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent’s official membership records address history.

<sup>2</sup> Due to the fact that respondent’s membership records address was outside the United States, the motion to revoke was properly mailed by recorded delivery. (Rules Proc. of State Bar, rule 60(b).)

**B. Probation Conditions in Supreme Court Case No. S158720**

On January 23, 2008, in Supreme Court Case No. S158720 (“Supreme Court order”), the California Supreme Court ordered that:

1. Respondent be suspended from the practice of law for 18 months, that execution of suspension be stayed, and that he be placed on probation for 18 months, on condition that he be actually suspended for one year; and

2. Respondent comply with other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed September 17, 2007, including, but not limited to:

a. Contacting the Office of Probation within 30 days from the effective date of discipline and scheduling a meeting with respondent’s assigned probation deputy to discuss the terms and conditions of probation;

b. Submitting quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation;

c. Completing the “Ethics School Workbook” and taking the test administered to attendees of Ethics School within six months of the effective date of discipline; and thereafter submitting a copy of the completed test to the Office of Probation with respondent’s quarterly report covering the annual quarter in which the test was completed; and

d. Completing the “Handbook on Client Trust Accounting for California Attorneys” and taking the test administered to attendees of Client Trust Accounting School within six months of the effective date of discipline; and thereafter submitting a copy of the completed test to the Office of Probation with respondent’s quarterly report covering the annual quarter in which the test was completed.

Notice of the Supreme Court order was served upon respondent in the manner prescribed by rule 8.264 of the California Rules of Court at respondent's official address in accordance with Business and Professions Code section 6002.1.<sup>3</sup> The Supreme Court order became effective on February 22, 2008.

**C. Probation Violations**

On or about February 22, 2008, the Office of Probation sent a letter to respondent at his former official address,<sup>4</sup> outlining the terms and conditions of his probation. This letter was returned to the State Bar with a notation stating that respondent's forwarding order had expired.

On September 25, 2008, the Office of Probation drafted a letter to respondent reminding him of various conditions of probation. A copy of this letter was emailed to respondent at il@protechcf.edu, but was subsequently returned as undeliverable. Said letter was also mailed that same day, however, it was returned due to insufficient postage. This letter was again mailed on October 6, 2008, and was not returned as undeliverable or for any other reason.

Based on the evidence submitted by the Office of Probation, respondent failed to:

1. Contact the Office of Probation by March 23, 2008, to schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation;
2. Submit his April 10, July 10, and October 10, 2008 quarterly reports to the Office of Probation;
3. Submit a copy of the completed Ethics School test to the Office of Probation with respondent's quarterly report covering the annual quarter in which the test was completed;<sup>5</sup> and

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<sup>3</sup> All references to section(s) are to the Business and Professions Code, unless otherwise stated.

<sup>4</sup> Said letter was dated February 1, 2008, however, it was not mailed until February 22, 2008. Respondent changed his official membership records address to his present official membership records address on February 20, 2008.

4. Submit a copy of the completed Client Trust Accounting School test to the Office of Probation with respondent's quarterly report covering the annual quarter in which the test was completed.<sup>6</sup>

To establish culpability for a probation violation charged in a probation revocation proceeding, the State Bar must prove, by a preponderance of the evidence, the text of the probation condition that the attorney is charged with violating and that the attorney willfully failed to comply with it. Willfulness in this context does not require a bad purpose or evil intent. Instead, it requires only a general purpose or willingness to commit an act or permit an omission. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

The court finds that respondent violated the conditions of his probation and that those violations were willful. Respondent's willful probation violations warrant the revocation of his probation. (Section 6093, subd. (b).)

#### **IV. Mitigating and Aggravating Circumstances**

##### **A. Mitigation**

Since respondent did not file a response to the probation revocation motion, no evidence in mitigation was presented and none is apparent from the record. (Rules Proc. of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>7</sup>

##### **B. Aggravation**

In aggravation, respondent has a prior record of discipline. (Std. 1.2(b)(i).) On January 23, 2008, the California Supreme Court, in the underlying matter, issued an order (S158720)

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<sup>5</sup> Respondent was required to take the Ethics School test by on or before August 22, 2008. Accordingly, a copy of this test should have been included with respondent's October 10, 2008 quarterly report, if not sooner.

<sup>6</sup> Respondent was required to take the Client Trust Accounting School test by on or before August 22, 2008. Accordingly, a copy of this test should have been included with respondent's October 10, 2008 quarterly report, if not sooner.

<sup>7</sup> All further references to standard(s) are to this source.

suspending respondent from the practice of law for 18 months, staying execution of the suspension, and actually suspending respondent from the practice of law for one year. This case involved respondent's commission of professional misconduct for which he was disciplined in the State of Oregon. Said misconduct centered on his affirmative misstatements, false representations, and failure to comply with an arbitrator's order regarding the delivery and sale of three "bronzes." Additionally, respondent used his client trust account as a personal checking account and failed to avoid a conflict of interest. In aggravation, respondent's misconduct caused harm to his client and to the administration of justice. In mitigation, respondent had no prior record of discipline.

#### V. 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 that amount as an actual suspension." (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

In determining the level of discipline to be imposed, the court must consider the "total length of stayed suspension which could be imposed as an actual suspension and the total amount of actual suspension earlier imposed as a condition of the discipline at the time probation was granted." (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) The extent of the discipline is dependent, in part, on the nature of the probation violation and its relationship to respondent's prior misconduct. (*Ibid.*)

Here, respondent has given the court no indication that he intends to comply with any of the conditions of his previously imposed probation. In doing so, respondent has failed to undertake any of the rehabilitative steps that were deliberately crafted to insure public protection.

In consideration of respondent's violation of probation conditions, his lack of participation in these proceedings, and his continuing noncompliance with probation conditions despite the Office of Probation's efforts to secure it, the court does not believe it worthwhile to recommend again placing him on probation subject to conditions.

The prior disciplinary order "provided [respondent] an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in [the matter] presently under consideration sadly indicates either his unwillingness or inability to do so." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) Hence, the court finds good cause to grant the motion to revoke respondent's probation and recommends, among other things, that the entire period of his stayed suspension be imposed.

Additionally, because the evidence demonstrates that respondent, despite the Supreme Court order, has yet to undertake the rehabilitative process and has been continuously suspended from the practice of law in California for more than two years (since September 2006), some additional review of his situation by this court is warranted and necessary before respondent should be allowed to re-enter the practice of law at the end of the actual suspension recommended above. To do otherwise would pose a risk of harm to the public and the profession. As a result, the court concurs with the State Bar's recommendation that respondent be required, as a condition of re-entering the practice, to provide proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law and in accordance with standard 1.4(c)(ii). Such a requirement has been utilized by the Review Department in the past and may be ordered, notwithstanding the restrictions of ruel

562 of the Rules of Procedure. (See *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737.)

## VI. Recommended Discipline

Accordingly, the court recommends as follows:

1. That the probation of respondent **W. Iain Elder Levie** previously ordered in Supreme Court case No. S158720 (SBC Case No. 06-J-12385) be revoked;
2. That the previous stay of execution of the suspension be lifted; and
3. That respondent be actually suspended from the practice of law for 18 months, with credit given for the time spent on inactive enrollment, and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

The court further 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 order in this matter. Willful failure to comply with the provisions of rule 9.20 may result in suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.<sup>8</sup>

It is also recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners and provide proof of passage to the Office of Probation during the period of his actual suspension. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

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<sup>8</sup>Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

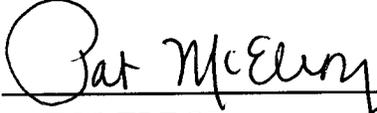
## VII. Costs

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

## VIII. Order of Involuntary Inactive Enrollment

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).<sup>9</sup> This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: February 23, 2009

  
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PAT McELROY  
Judge of the State Bar Court

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<sup>9</sup>Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

**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 February 24, 2009, I deposited a true copy of the following document(s):

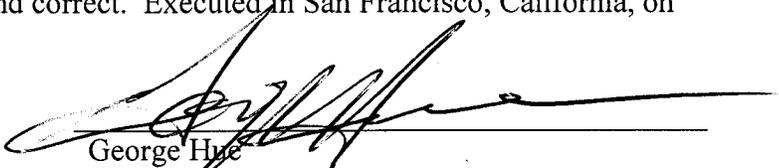
ORDER GRANTING MOTION TO REVOKE PROBATION AND ORDER OF INACTIVE ENROLLMENT

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 San Francisco, California, addressed as follows:  
  
W. IAIN ELDER LEVIE  
THE STABLES WESTERTOWN  
ROTHIENORMAN  
INVERURIE, ABEROESHIRE  
AB51 8US, SCOTLAND
- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- by overnight mail at , California, addressed as follows:
- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- 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 February 24, 2009.

  
George Hue  
Case Administrator  
State Bar Court