

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 14-PM-00497-RAP
)	
LESLIE FERENC NADASI,)	ORDER GRANTING MOTION TO REVOKE
)	PROBATION AND ORDER OF
Member No. 81237,)	INVOLUNTARY INACTIVE ENROLLMENT
)	(Bus. & Prof. Code, § 6007, subd. (d)(1))
A Member of the State Bar.)	

Introduction¹

The Office of Probation of the State Bar of California (OP), represented by Supervising Attorney Terrie Goldade, filed a motion seeking to revoke the disciplinary probation that the Supreme Court imposed on Respondent **LESLIE FERENC NADASI**² in its order filed on July 27, 2012, in case number S202575 (State Bar Court case numbers 11-O-11582 and 11-O-17314 (consolidated)³), styled *In re Leslie Ferenc Nadasi on Discipline (Nadasi I)*. (§ 6093, subds. (b); Rules Proc. of State Bar, rule 5.310 et seq.) Respondent did not appear in this probation revocation proceeding.

As set forth below, the court finds, by a preponderance of the evidence (§ 6093, subd. (c); Rules Proc. of State Bar, rule 5.311), that Respondent wilfully failed to comply with three of the

¹ Unless otherwise indicated, all statutory references are to the Business and Professions Code.

² Respondent was admitted to the practice of law in California on September 15, 1978, and has been a member of the State Bar of California since that time. As discussed *post*, Respondent has one prior record of discipline.

³ Case number 11-O-11582 includes correlated case number 11-O-14719, and case number 11-O-17314 includes correlated case number 11-O-17401.

conditions of his probation as charged in the motion to revoke probation. Accordingly, the court will grant the motion to revoke probation and recommend, inter alia, that Respondent be again placed on one year's stayed suspension and two years' probation with conditions, including a one-year actual suspension that will continue until Respondent complies with the probation condition that requires him to refund a total of \$4,500 in unearned, advanced fees to two former clients with interest. The court will also recommend that, if Respondent remains suspended for two years or more as a result of not refunding the unearned fees, Respondent's actual suspension continue until he establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.2(c)(i) of the Standards for Attorney Sanctions for Professional Misconduct.⁴

Finally, the court will order that Respondent be involuntarily enrolled as an inactive member of the State Bar of California under section 6007, subdivision (d)(1) effective three calendar days after the service of this order by mail.

Procedural History

On January 27, 2014, OP properly served a copy of the present motion to revoke probation on Respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar of California. (§ 6002.1, subd. (c); Rules Proc. of State Bar, rules 5.25, 5.314(A); *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]; but see also *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.) On January 27, 2014, OP also mailed a courtesy copy of the motion to Respondent at his latest address on the State Bar's records by first class mail, regular delivery.

⁴ The standards are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

On January 30, 2014, OP filed the motion to revoke probation. Respondent failed to file a response to the motion or to otherwise appear in this probation revocation proceeding. Because Respondent failed to file a response to the motion to revoke probation, the court will treat the factual allegations in the motion and its supporting documents as admissions. (Rules Proc. of State Bar, rule 5.314(C).)

On February 26, 2014, the court took the motion to revoke under submission for decision.

Findings of Fact and Conclusions of Law

In its July 27, 2012, order in *Nadasi I*, the Supreme Court placed Respondent on one year's stayed suspension and two years' probation with conditions, including a 30-day actual suspension and restitution. The court finds that the Clerk of the Supreme Court promptly mailed a copy of the July 27, 2012, order in *Nadasi I* to Respondent (Cal. Rules of Court, rule 8.532(a); Evid. Code, § 664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571) and that Respondent actually received that copy of the order (Evid. Code, § 641 [the mailbox rule]).

The Supreme Court's July 27, 2012, order in *Nadasi I* and the discipline imposed on Respondent in it became effective on August 26, 2012. (Cal. Rules of Court, rule 9.18(a).)

The Supreme Court imposed the foregoing discipline, including each of the conditions of probation, on Respondent in accordance with a stipulation regarding facts, conclusions of law, and disposition that Respondent entered into with the State Bar and that the State Bar Court approved in an order filed on April 4, 2012, in case numbers 11-O-11582 and 11-O-17314 (consolidated) (*Nadasi I* stipulation).

Probation Violations

Probation-Reporting Condition

Respondent's probation-reporting condition requires, inter alia, that Respondent submit written-quarterly-probation reports to OP on every January 10, April 10, July 10, and

October 10. In each report, Respondent is required to state, under the penalty of perjury, whether he has “complied with the State Bar Act [§ 6000, et seq.], the Rules of Professional Conduct, and all the conditions of probation during the preceding calendar quarter” and whether there are State Bar Court proceedings pending against him.

The record establishes, as charged, that Respondent willfully violated his probation-reporting condition by failing to submit the probation reports that were due on October 10, 2013, and January 10, 2014.

Ethics School Condition

The record establishes, as charged, that Respondent willfully violated his Ethics School probation condition by failing to provide OP with proof that he attended and successfully completed the State Bar’s Ethics School no later than August 26, 2013 (which was one year after the effective date of the Supreme Court’s July 27, 2012, order in *Nadasi I*).

Restitution Condition

Respondent’s restitution condition required that he refund a total of \$4,500 in unearned, advanced fees together with interest thereon to two former clients (or the Client Security Fund (CSF) if appropriate) and that he provide proof of payment to OP no later than August 26, 2013 (which was one year after the effective date of the Supreme Court’s July 27, 2012, order *Nadasi I*). OP charges that Respondent willfully violated the restitution condition because “he has failed to provide proof of any payment to any payee.” The record establishes the charged violations of Respondent’s restitution condition.

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. [Citations.]” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.) Even though Penal Code section 1203.2, subdivision (a) prevents a California court from revoking a criminal

defendant's probation for the defendant's failure to comply with a restitution condition unless the defendant both willfully failed to pay and had the ability to pay restitution, section 1203.2 does not apply in State Bar Court disciplinary proceedings. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 537; see also *In the Matter of Respondent Y, supra*, 3 Cal. State Bar Ct. Rptr. at p. 868, fn. 4.) Nonetheless, before the court will revoke an attorney's disciplinary probation for failing to comply with a probation condition requiring restitution, the court will consider both the attorney's ability to pay the required restitution and the attorney's efforts to acquire the funds to pay. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at pp. 537-538, citing *Bearden v. Georgia* (1983) 461 U.S. 660, 672-673.)

Because Respondent failed to file a response to the motion to revoke probation or to otherwise appear in this proceeding, there is no evidence in the record that indicates whether Respondent lacks the financial ability to pay restitution or what efforts, if any, Respondent has undertaken in an attempt to comply with his restitution condition. Thus, "no circumstances have been presented showing that it would be fundamentally unfair to revoke the probation in this case" based on Respondent's failure to comply with his restitution probation condition. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 310.)

Finally, even assuming arguendo that Respondent lacks the financial ability to pay any restitution whatsoever to either of the two former clients, Respondent's probation may still be revoked for his failure to pay because, in such an instance, Respondent will not be disciplined for violating a probation condition for which he lacks the ability to comply. Instead, Respondent will be disciplined for violating the restitution condition without first attempting to be relieved from the condition in whole or in part based on an inability to pay. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868, fn. 4.)

Aggravation

Prior Record of Discipline (Std. 1.5(a).)

Respondent has one prior record of discipline, which is the Supreme Court's July 27, 2012, order in *Nadasi I* placing Respondent on one year's stayed suspension and two years' probation with multiple conditions, including actual suspension and restitution. In the *Nadasi I* stipulation, Respondent stipulated to the following nine counts of misconduct in four separate client matters: two counts of failing to return the clients' files; two counts of failing to refund unearned, advanced fees; two counts of failing to communicate; two counts of failing to cooperate in a disciplinary investigation; and one count of failing to perform legal services competently.

In the *Nadasi I* stipulation, Respondent also stipulated that, in aggravation, his misconduct involved multiple acts and caused significant client harm to the two former clients to whom he failed to refund unearned fees. Respondent's misconduct deprived those two clients of the use of their money for a number of years. In *Nadasi I*, Respondent was given mitigation for his 30 years of discipline free practice, cooperation with the State Bar, stress, and posttraumatic-stress-disorder disability from late December 2010 through late February 2011

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent's present misconduct involves multiple (i.e., nine) acts of misconduct.

Mitigation

There is no evidence of any mitigating circumstance as Respondent did not appear.

Discussion

Public protection and attorney rehabilitation are the primary goals of attorney 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 in a probation revocation proceeding, the court is to 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 court is to also consider the seriousness of the probation violations, the Respondent’s recognition of his or her misconduct, and the Respondent’s efforts to comply with the conditions of probation. (*Ibid.*) Furthermore, “[t]he violation of a probation condition significantly related to the attorney’s prior misconduct merits the greatest discipline, especially if the violation raises a serious concern about the need to protect the public or shows the attorney’s failure to undertake steps toward rehabilitation.” (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151.) “The degree of discipline ultimately imposed must, of necessity, correspond to some reasonable degree with the gravity of the misconduct at issue.” (*In re Nevill* (1985) 39 Cal.3d 729, 735.)

In addition, the court considers standard 1.8(a), which provides: “If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.”

An attorney’s repeated failure to strictly comply with the conditions of her or her State Bar disciplinary probation “ ‘demonstrates a lapse of character and a disrespect for the legal system that directly relate to [the attorney’s] fitness to practice law and serve as an officer of the court. [Citation.]’ [Citation.]” (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar

Ct. Rptr. 523, 530.) Thus, the court concludes that Respondent's nine probation violations warrant the imposition of a lengthy actual suspension.

In that regard, the court finds *In the Matter of Howard, supra*, 2 Cal. State Bar Ct. Rptr. 445 instructive on the appropriate length of that actual suspension. Like Respondent, the attorney in *Howard* did not appear or participate in the probation violation proceeding. In *Howard*, the attorney was placed on one year's actual suspension because she 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 she had complied with a prior civil court order to turn over files and financial records to the former client.

The court agrees with OP's position that the appropriate actual suspension to recommend in the present case is a one-year actual suspension continuing until Respondent refunds the \$4,500 in unearned, advanced fees together with interest thereon and until Respondent complies with standard 1.2(c)(i) if he remains on actual suspension for two years or more. However, the court also independently concludes that public protection requires that Respondent now demonstrate that he is willing and capable of fully engaging in the rehabilitative process and of strictly complying with Supreme Court disciplinary orders by imposing on him, for two years prospectively, probation conditions that are substantially identical to those imposed on him by the Supreme Court in *Nadasi I. (In the Matter of Meyer, supra*, 3 Cal. State Bar Ct. Rptr. at p. 705.)

The court does not, however, recommend that Respondent be again ordered to take and pass a professional responsibility examination because he was ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) in the Supreme Court's July 27, 2012, order in *Nadasi I.*

Order and Discipline Recommendation

The court orders that the Office of Probation's January 30, 2014, motion to revoke probation is GRANTED. Accordingly, the court also recommends that the probation imposed on Respondent **LESLIE FERENC NADASI** in the Supreme Court's July 27, 2012, order in case number S202575 (State Bar Court case numbers 11-O-11582 and 11-O-17314 (consolidated)) be revoked. The court further recommends that **LESLIE FERENC NADASI** again be suspended from the practice of law in the State of California for one year, that execution of that one-year suspension be stayed, and he be placed on probation for two years subject to the following conditions:

1. Nadasi is suspended from the practice of law for the first year of probation (with credit given for the period of his involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (d)(1) in accordance with Business and Professions Code section 6007, subdivision (d)(3)), and he will remain suspended until the following requirements are satisfied:
 - A. Nadasi makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof of payment to the State Bar's Office of Probation in Los Angeles:
 - (1) Carl Lloyd in the amount of \$2,000 plus 10 percent interest per year from November 4, 2010; and
 - (2) Esta Bernstein in the amount of \$2,500 plus 10 percent interest per year from December 11, 2008.
 - B. If Nadasi remains suspended for two years or more as a result of not satisfying the preceding restitution condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Nadasi is to comply with the provisions of the State Bar Act, the State Bar Rules of Professional Conduct, and all of the conditions of this probation.
3. Within 30 days after the effective date of the Supreme Court order in this proceeding, Nadasi is to contact the State Bar's Office of Probation in Los Angeles to schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Nadasi must meet with the probation deputy either in-person or by telephone. Thereafter, Nadasi must promptly meet with the probation deputy as directed and upon request of the Office of Probation.

4. Nadasi is to maintain, with the State Bar's Membership Records Office in San Francisco and with the State Bar's Office of Probation in Los Angeles, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes (Bus. & Prof. Code, § 6002.1, subd. (a)(1)). In addition, Nadasi is to maintain, with the State Bar's Office of Probation, his current home address and telephone number (Bus. & Prof. Code, § 6002.1, subd. (a)(5)). Nadasi's home address and telephone number are not to be made available to the general public unless his home address is also his official address on the State Bar's Membership Records. (Bus. & Prof. Code, § 6002.1, subd. (d).) Nadasi must notify the Membership Records Office and the Office of Probation of any change in this information no later than 10 days after the change.
5. Nadasi is to submit written quarterly reports to the State Bar's Office of Probation in Los Angeles. The reports must be delivered or postmarked no later than each January 10, April 10, July 10, and October 10. In each report, Nadasi must state, under penalty of perjury under the laws of the State of California, whether he has complied with the State Bar Act, the State Bar Rules of Professional Conduct, and all conditions of this probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to the quarterly reports, Nadasi is to submit a final report containing the same information. The final report must be delivered or postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of probation period.

6. Subject to the assertion of any applicable privilege, Nadasi is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.
7. Within the first year of his probation, Nadasi is to attend and satisfactorily complete the State Bar's Ethics School and to provide satisfactory proof of his successful completion of that program to the State Bar's Office of Probation in Los Angeles. The program is offered periodically both at 180 Howard Street, San Francisco, California 94105-1639 and at 845 South Figueroa Street, Los Angeles, California 90017-2515. Arrangements to attend the program must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Nadasi's Minimum Continuing Legal Education (MCLE) requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing this program. (Accord, Rules Proc. of State Bar, rule 3201.)
8. Nadasi's new two-year probation will begin on the effective date of the Supreme Court order in this probation revocation proceeding. At the expiration of this new two-year probation, if Nadasi has complied with all the conditions of probation, the new one-year period of stayed suspension will be satisfied and that suspension will be terminated.

Rule 9.20 & Costs

The court further recommends that **LESLIE FERENC NADASI** 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.⁵

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

Order of Involuntary Inactive Enrollment

The requirements set forth in Business and Professions Code section 6007, subdivision (d)(1) having been met, the court orders that **LESLIE FERENC NADASI** be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (d)(1) effective three calendar days after service of this order by mail (Rules Proc. of State Bar, rule 5.315). (See also Bus. & Prof. Code, § 6007, subd. (d)(2); Rules Proc. of State Bar, rule 5.315.)

Dated: March 28, 2014.

RICHARD A. PLATEL
Judge of the State Bar Court

⁵ Nadasi is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this matter. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)