

FILED

AUG 25 2015

STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of

LYNDSEY MICHELLE HELLER,

Member No. 188234

A Member of the State Bar.

) Case No.: 15-PM-13165-DFM

) ORDER GRANTING MOTION TO
) REVOKE PROBATION AND ORDER OF
) INACTIVE ENROLLMENT
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)
)

Introduction

On June 29, 2015, the Office of Probation of the State Bar of California (Office of Probation) filed a motion to revoke the probation of respondent Lyndsey Michelle Heller (Respondent). Although she was properly served with the motion to revoke probation by certified mail, return receipt requested, and by regular mail at her State Bar membership records address, Respondent did not participate in this proceeding. On August 7, 2015, this court issued an order submitting the motion for decision, serving Respondent with a copy of that order.

Good cause having been shown, the motion to revoke Respondent's probation is granted and discipline is recommended as set forth below.

Findings of Fact and Conclusions of Law

On April 11, 2014, the California Supreme Court filed an order, S216208, accepting the State Bar Court's discipline recommendation in case nos. 11-O-18420, et al. This discipline included a one-year stayed suspension, two years' probation, and a 60-day actual suspension.

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This order was properly served on Respondent and became effective on May 11, 2014.¹ In addition, a copy of the stipulation and this court's order approving the stipulation had previously been properly served on Respondent on November 26, 2013.

On April 17, 2014, the Office of Probation sent Respondent a reminder letter regarding the probation conditions at her official address. This letter was not returned as undeliverable or for any other reason.

On June 10, 2014, Respondent and her probation deputy communicated by telephone regarding the terms and conditions of her disciplinary probation, including restitution. Between June 10, 2014 and April 30, 2015, the Office of Probation communicated with Respondent on several occasions regarding her probation conditions. Respondent informed the Office of Probation that she was experiencing health problems relating to ruptured disks in her neck. The Office of Probation informed Respondent that she could file a motion for extension of time to comply with her probation conditions. On or about May 2015, the Office of Probation learned that Respondent had not paid restitution, as required by the terms and conditions of her disciplinary probation.

Despite these efforts to make Respondent aware of the conditions of her probation and to secure her compliance with them, Respondent did not comply with the following probation condition:

- (a) Respondent must pay restitution and provide satisfactory proof of payment to the Office of Probation no later than one year after the effective date of the Supreme Court Order in this matter, as follows:
 - 1. Judi Wexler, \$2,500 principal, with interest accruing from May 7, 2010;
 - 2. Teresa Lindenmeier, \$3,500 principal, with interest accruing from March 5, 2011;

¹ In the absence of evidence to the contrary, the court finds that the Clerk of the Supreme Court performed his or her duty by transmitting a copy of the Supreme Court's order to Respondent immediately after its filing. (Rule 8.532(a), Cal. Rules of Court; Evid. C. §664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

3. Patricia Magoon, \$2,950 principal, with interest accruing from September 30, 2010;
4. Dorcas Peralta, \$8,000 principal, with interest accruing from December 27, 2011;
5. David and Vickie Wagner, \$4,500 principal, with interest accruing from March 28, 2011.

Aggravation

Prior Discipline

Respondent's prior record of discipline is a factor in aggravation. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,² std. 1.5(a).) Respondent has one prior imposition of discipline.

In the underlying matter, the Supreme Court, on April 11, 2014, filed an order in case no. S216208 (State Bar Court case nos. 11-O-18420, et al.)) suspending Respondent from the practice of law for one year, staying execution of the suspension, placing her on probation for two years, with a 60-day period of actual suspension. In this matter, Respondent stipulated to improperly collecting advanced fees for loan modification services (four counts), failing to perform legal services with competence (two counts), and engaging in the unauthorized practice of law in another jurisdiction. In aggravation, Respondent committed multiple acts of misconduct. In mitigation, Respondent had no prior record of discipline, she was experiencing extreme emotional/physical difficulties at the time of the misconduct, she cooperated with the State Bar by entering into a pre-filing stipulation, and she demonstrated good character.

Multiple Acts of Misconduct

Respondent's violations of the terms of her disciplinary probation, i.e., failing to pay restitution to five separate individuals, constitute multiple acts of misconduct. (Std. 1.5(b).)

² All further references to standard(s) or std. are to this source. Effective July 1, 2015, the standards were amended. As this case was submitted after the effective date, the court applies the new version.

Mitigation

It was Respondent's burden to establish mitigating factors. No mitigating factors were shown by the evidence presented to this court.

Discussion

The extent of the discipline to be recommended is dependent, in part, on the seriousness of the probation violation, the member's recognition of the misconduct, and the member's prior efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Having considered these factors and the Office of Probation's contentions, the court concludes that actual suspension for one year and until payment of restitution, as requested, is both required and sufficient to protect the public in this instance. Respondent was aware of the terms and conditions of her disciplinary probation, yet did not comply with them despite reminders from the Office of Probation. Her failure to participate in this proceeding is also a matter of considerable concern to this court.

Recommended Discipline

Accordingly, the court recommends as follows:

1. That the probation of respondent **Lyndsey Michelle Heller** previously ordered in Supreme Court case no. S216208 (State Bar Court case nos. 11-O-18420, et al.) 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 a minimum of one year, and she will remain suspended until the following requirements are satisfied:
 - i. She 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 to the State Bar's Office of Probation in Los Angeles:
 - (1) Judi Wexler in the amount of \$2,500 plus 10 percent interest per year from May 7, 2010;
 - (2) Teresa Lindenmeier in the amount of \$3,500 plus 10 percent interest per year from March 5, 2011;

- (3) Patricia Magoon in the amount of \$2,950 plus 10 percent interest per year from September 30, 2010;
 - (4) Dorcas Peralta in the amount of \$8,000 plus 10 percent interest per year from December 27, 2011; and
 - (5) David and Vickie Wagner in the amount of \$4,500 plus 10 percent interest per year from March 28, 2011.
- ii. If Respondent is actually suspended for two years or more, she must remain suspended until she provides proof to the satisfaction of the State Bar Court of her rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.2(c)(1).

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Multistate Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination as she was previously ordered to do so in Supreme Court matter S216208.

Costs

It is recommended 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.

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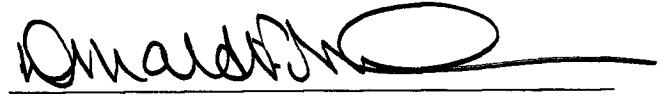
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Order of Involuntary Inactive Enrollment

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).³ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: August 25, 2015



DONALD F. MILES
Judge of the State Bar Court

³Any 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

[Rules Proc. of State Bar; Rule 5.27(B); 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 August 25, 2015, 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:

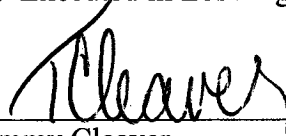
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**LYNDSEY MICHELLE HELLER
LAW OFFICE OF LYNDSEY M HELLER
270-F N EL CAMINO REAL #522
ENCINITAS, CA 92024**

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

TERRIE GOLDADE, Office of Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 25, 2015.



Tammy Cleaver
Case Administrator
State Bar Court