

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No. 08-PM-12549-PEM
	)	
<b>CARY OSCAR LINDSTROM,</b>	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE PROBATION AND DENYING</b>
<b>Member No. 129700,</b>	)	<b>MOTION FOR INVOLUNTARY</b>
	)	<b>INACTIVE ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

Based on alleged violations of certain conditions of probation, the State Bar of California, Office of Probation, filed a motion to revoke the probation of respondent **Cary Oscar Lindstrom** (respondent) imposed by the California Supreme Court in order S155233 (State Bar Court case no. 06-O-14506). In its motion, the Office of Probation sought to revoke respondent's probation and to impose upon respondent the entire one year period of suspension previously stayed by order of the Supreme Court filed on October 10, 2007.<sup>1</sup> The Office of Probation further requested that respondent be ordered to comply with rule 9.20 of the California Rules of Court, and that he be placed on involuntary inactive enrollment pursuant to Business

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<sup>1</sup> At the hearing, the Office of Probation changed its position regarding imposing the entire period of stayed suspension, as the Office of Probation acknowledged there were some mitigating circumstances. The Office of Probation recommended at the hearing that respondent's probation be revoked and reimposed, and that respondent be suspended for a substantial period of time; that execution of such suspension be stayed; and that respondent be actually suspended for a period greater than respondent had received in prior disciplinary matters.

and Professions Code section 6007, subdivision (d).<sup>2</sup>

The court finds, by a preponderance of the evidence, that respondent has violated certain conditions of his disciplinary probation imposed by the California Supreme Court in order S155233 (State Bar Court case no. 06-O-14506). As a result, this court grants the Office of Probation's motion to revoke respondent's probation, and the court will recommend that respondent's probation in Supreme Court matter S155233 (State Bar Court case no. 06-O-14506) be revoked; that the stay of execution of the suspension in S155233 (State Bar Court case no. 06-O-14506) be lifted; and that respondent be suspended from the practice of law for one year; that execution of such suspension be stayed; and that respondent be placed on probation for two years on conditions including that he be actually suspended from the practice of law for 75 days. However, for the reasons set forth at the end of this decision, the court denies the Office of Probation's request to involuntarily enroll respondent as an inactive member of the State Bar pursuant to section 6007, subdivision (d).

## **II. Pertinent Procedural History**

On June 27, 2008, the Office of Probation filed a motion to revoke respondent's probation imposed in Supreme Court order S155233 (State Bar Court case no. 06-O-14506). A copy of the motion was served on respondent on that same day addressed to respondent at his latest address shown on the official membership records of the State Bar.

On July 18, 2008, respondent filed an Opposition to Motion to Revoke Probation and Declaration of Cary O. Lindstrom.

On July 25, 2008, the Office of Probation filed a request that the court take judicial notice, pursuant to Evidence Code section 452, of the certified records of the State Bar Court

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<sup>2</sup> Unless otherwise indicated, all further references to "section" refer to provisions of the Business and Professions Code.

pertaining to respondent's prior disciplinary matter. These records included, among other things, the Supreme Court order imposing discipline in Supreme Court matter S144121 (State Bar Court case no. 02-O-14508; 04-O-15353 (Cons.)) which was filed on August 15, 2006, and the parties' Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving the stipulation, as modified by the court, which was filed on April 14, 2006.

On August 19, 2008, the Office of Probation filed another Request for Judicial Notice. The Office of Probation requested that the court take judicial notice of the following documents pursuant to Evidence Code section 452: (1) Respondent's Request for Extension of Time to Pass the Multistate Professional Responsibility Examination and Stay of Pending Suspension from the Practice of Law which bore case nos. S144121 and S155233; (2) Office of Probation's Opposition to Request for Extension of Time to Pass the Multistate Professional Responsibility Examination and Stay of Pending Suspension from the Practice of Law which was filed May 30, 2008, bearing Supreme Court matter no. S144121 (State Bar Court case no. 02-O-14508; 04-O-15353 (Cons.)) and S155233 (State Bar Court case no. 06-O-14506);<sup>3</sup> and (3) the State Bar Court Review Department's Order filed June 20, 2008, granting respondent's motion for an extension of time to pass the Multistate Professional Responsibility Examination. At the hearing, the court granted the Office of Probation's request for judicial notice.

The hearing in this matter was held on August 28, 2008, and this matter was submitted for decision on that same day following the hearing.

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

The following findings of fact are based on the testimony at the hearing, the documents judicially noticed at the hearing and which the court now admits into evidence, and all other

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<sup>3</sup> The opposition included a footnote setting for that respondent was not required to take the Multistate Professional Responsibility Examination (MPRE) in Supreme Court matter S155233 (State Bar Court case no. 06-O-14506).

documents admitted into evidence at the time of the hearing.

**A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 11, 1987, and has since been a member of the State Bar of California.

**B. Background**

On February 18, 2006, respondent signed a Stipulation Re Facts, Conclusions of Law and Disposition in State Bar Court case no(s). 02-O-14508; 04-O-15353.

On April 14, 2006, the court filed its order modifying and approving the stipulation.

On August 15, 2006, the Supreme Court filed its order imposing discipline in Supreme Court matter S144121 (State Bar Court case no. 02-O-14508; 04-O-15353 (Cons.)). As part of the discipline imposed in S144121, respondent was placed on probation for two years and ordered to comply with certain conditions. One such probation condition required respondent to submit written quarterly reports to the Office of Probation. Respondent filed his quarterly reports in a timely manner in connection with the discipline imposed pursuant to Supreme Court order S144121 (State Bar Court case no. 02-O-14508; 04-O-15353 (Cons.)).

On October 25, 2006, respondent was notified by the State Bar of California, Office of the Chief Trial Counsel, Enforcement (State Bar), that it had opened an investigation in case no. 06-O-14506 regarding a complaint concerning respondent's failure to turn over certain materials and to communicate with his former client and successor counsel so the former client could be properly represented on appeal.

On January 8, 2007, respondent met with State Bar Deputy Trial Counsel Esther Rogers (Rogers) to discuss the investigation. At that meeting, Rogers requested that respondent provide a statement in mitigation, as well as a law office management plan, to assist her in making a discipline recommendation to the State Bar Court.

On January 10, 2007, respondent received correspondence from Rogers, wherein she offered settlement of case no 06-O-14506 prior to the filing of a Notice of Disciplinary Charges, if respondent provided her with certain information she requested at the January 8, 2007 meeting. Rogers noted in her letter was that one of the probation conditions would require respondent to provide Rogers with a law office management plan in advance of the settlement of the matter.

Respondent accepted the terms of the settlement agreement in a letter to Rogers dated January 16, 2007, and which was sent via facsimile transmission. In another letter to Rogers also dated January 16, 2007, which was also sent via facsimile transmission, respondent provided a statement in mitigation and a law office management plan to Rogers.

On January 31, 2007, respondent received a letter from Rogers concerning settlement of the case. The correspondence included a Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving the stipulation in State Bar Court case no. 06-O-14506. This document was signed and returned to Rogers on February 9, 2007.

On May 10, 2007, Rogers signed the stipulation. Respondent thought that the law office management plan that he submitted to Rogers was approved, since Rogers signed the stipulation and he had no further correspondence with her. The court executed an order approving the stipulation and the stipulation was filed on May 18, 2007.

### **Violation of Probation Conditions**

Thereafter, on October 10, 2007, the Supreme Court issued an order in Supreme Court matter S155233 (State Bar Court case no. 06-O-14506), effective November 9, 2007, suspending respondent from the practice of law for one year, staying execution of said suspension, and placing respondent on probation for three years subject to certain probation conditions including, but not limited to, the following:

1. Respondent was to contact the Office of Probation within 30 days of the effective

date of discipline and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of respondent's probation;

2. Respondent was to submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the probationary period; and
3. Respondent was to provide a copy of his law office management plan to the Office of Probation<sup>4</sup> within 30 days of the November 9, 2007, effective date of discipline in this matter and state, under penalty of perjury, in each quarterly report that he has complied with his law office management plan<sup>5</sup> during the proceeding calendar quarter.

The Supreme Court order was properly served on respondent as required by rule 8.532(a) of the California Rules of Court at his official address.

On October 25, 2007, Cheryl Chisholm (Chisholm), in her capacity as a probation deputy for the Office of Probation, sent respondent an initial letter outlining certain terms and condition of his probation in Supreme Court matter S155233 (State Bar Court case no. 06-O-14506. In this letter, Chisholm warned respondent that he was responsible for timely complying with each and every term and condition of his probation whether or not it was reflected in the letter and/or the enclosed Quarterly Report form. The letter also stated that within 30 days from the effective date of discipline, respondent was to schedule a meeting with Chisholm to discuss the terms and conditions of his discipline. However, respondent never received the October 25, 2007 letter.<sup>6</sup>

On April 5, 2008, respondent received a facsimile from Chisholm advising him that he

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<sup>4</sup> The stipulation erroneously referred to the probation unit, rather than the Office of Probation.

<sup>5</sup> Although the stipulation fails to include the word "plan" it is apparent from the context of the document that this is what is being referred to in the stipulation.

<sup>6</sup> The court found respondent's testimony on this issue credible.

was not in compliance with his probation conditions in Supreme Court matter S155233 (State Bar Court case no. 06-O-14506).

On April 7, 2008, Chisholm sent a follow-up letter to respondent advising him that the Office of Probation had not received his first quarterly report. Additionally, the letter stated that respondent was being referred for review and determination of further action for not submitting his law office management plan, the January 10, 2008 Quarterly Report, and January 10, 2008 Law Office Management Plan Compliance.<sup>7</sup>

On April 7, 2008, respondent faxed to the Office of Probation his January 10, 2008 quarterly report and the Law Office Management Plan that he had submitted to Rogers. Respondent failed to state in his quarterly report due January 10, 2008, that he had complied with his law office management plan during the preceding quarter.

Respondent participated, for the first time, in a telephonic meeting with his probation deputy regarding the terms and conditions of his probation on April 9, 2008.

On April 10, 2008, Terrie Goldade (Goldade), supervising attorney for the Office of Probation, sent respondent a letter indicating that the Office of Probation was rejecting his Law Office Management Plan. In the letter, respondent was advised that since his law office management plan was due December 9, 2007, he was not in compliance with the terms and conditions of his probation. Goldade also informed respondent that she expected to immediately receive a revised law office management plan from him.

Also on April 10, 2008, the Office of Probation received a copy of respondent's January 10, 2008 and April 10, 2008 quarterly reports. Respondent failed to state in his quarterly report due April 10, 2008, that he had complied with his law office management plan during the

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<sup>7</sup> This refers to respondent stating, under penalty of perjury, in each quarterly report that he has complied with his law office management plan during the preceding calendar quarter.

preceding quarter.

On April 24, 2008, the Office of Probation successfully faxed to respondent a note instructing respondent to submit the original January 10, 2008 and April 10, 2008 quarterly reports and to resubmit his law office management plan.

Respondent has never sent the Office of Probation his revised law office management plan.

### **Conclusions of Law**

Bad faith is not a requirement for a finding of culpability in a probation violation matter; “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.)

Pursuant to section 6093, subdivision (c) and rule 561 of the Rules of Procedure of the State Bar of California, the court concludes that the Office of Probation has demonstrated by a preponderance of the evidence that respondent willfully violated certain conditions of probation ordered by the Supreme Court in Supreme Court matter S155233 (State Bar Court case no. 06-O-14506). In fact, respondent admitted that he did not comply with the conditions of his probation in Supreme Court matter S155233.

Respondent admitted that he failed, within 30 days from the effective date of discipline, to contact the Office of Probation and schedule a meeting with his probation deputy to discuss the terms and conditions of his probation and thereafter to meet with his probation deputy in a timely manner.

Respondent also admitted that he failed to provide a copy of his law office management plan to the Office of Probation within 30 days of the effective date of his discipline.<sup>8</sup>

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<sup>8</sup> Although respondent admitted that he has yet to provide the Office of Probation with a comprehensive law office management plan approved by the Office of Probation, the condition



Finally, respondent admitted that he did he did not file his first quarterly report due January 10, 2008 until April 10, 2008. Furthermore, respondent also failed to state in his quarterly reports due January 10 and April 10, 2008, that he had complied with his law office management plan during the preceding quarter.

Therefore, the State Bar has demonstrated by a preponderance of the evidence that respondent willfully violated certain probation conditions ordered by the Supreme Court in its October 10, 2007 order imposing discipline in Supreme Court matter S155233 (State Bar Court case no. 06-O-14506). This warrants the revocation of respondent's probation as provided by section 6093, subdivision (b).

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

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

There are several mitigating circumstances in this case. Respondent displayed candor and cooperation during the State Bar proceedings. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(v) (standard).)

Respondent acted in good faith regarding his failure to timely file his January 10, 2008 quarterly report and his failure to timely provide a copy of his law office management plan to the Office of Probation. (Standard 1.2(e)(ii).) "In order to establish good faith as a mitigating circumstance, an attorney must prove that his . . . beliefs were both honestly held and reasonable." (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.) Respondent submitted the report required by Supreme Court order S144121 (State Bar Court case no. 02-O-14508; 04-O-15353 (Cons.)) every quarter to both Chisholm and his probation

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of probation did not set forth the specifics of the plan or require that the plan be approved by the Office of Probation. As such, the court will not base the finding that respondent violated certain conditions of his probation on his failure to provide the Office of Probation with a comprehensive law office management plan which meets with the approval of the Office of Probation. However, this will be considered as a factor in aggravation.

monitor. However, prior to Chisholm's facsimile on April 5, 2008, he was unaware that a separate quarterly report was necessary for case number S155233. As soon as he became aware of the fact that a separate quarterly report was required, however, respondent immediately sent separate quarterly reports for each disciplinary matter. Respondent also thought that the law office management plan he had submitted to Rogers was in compliance with his probation. Respondent thought his law office management plan was approved, since Rogers signed the stipulation and he had no further correspondence with her. He was therefore completely surprised when he was notified that his law office management plan was inadequate. The court finds respondent credible on this issue. The court believes that respondent did not receive the October 25, 2007 letter and, since respondent was filing his quarterly reports in his other disciplinary matter and no one informed him he had to submit separate quarterly reports in connection with each disciplinary matter, it was reasonable for respondent to conclude that he was in compliance with his probation. The fact that this belief was both honestly and reasonably held by respondent is bolstered by the fact that as soon as respondent was notified that he needed to submit quarterly reports in both disciplinary matters, he began doing so. As such, the court finds that respondent acted in good faith with respect to the quarterly report due January 10, 2008 and his failure to timely submit his law office management plan to the Office of Probation.

In addition, the court gives some limited weight in mitigation to the fact that at the time respondent signed the stipulation in case no. 06-O-14506, he was suffering from extreme emotional difficulties due to the illnesses of his mother and father and the eventual death of his father. (Standard 1.2(e)(iv).) Beginning in December 2005, respondent began spending considerable time with his father, who underwent surgery for complications from colon cancer. Respondent also took over from his father the care for his bed ridden mother, who was in a convalescent home due to a stroke she suffered in September 2002. In May 2006, as

respondent's father was convalescing from his surgery, he was readmitted to the hospital because the cancer had metastasized. Respondent's father remained bedridden until he died in September 2006. Respondent's mother died in August 2007, and prior to her death, respondent visited his mother in her convalescent home on a daily basis, as he had promised his father he would do. The deaths of respondent's parents had a profound impact on respondent's life, as until that time he had never experienced the death of close relatives.

**B. Aggravating Circumstances**

Respondent's prior discipline record is an aggravating factor. (Standard 1.2(b)(i).)<sup>9</sup>

1. In Supreme Court matter S144121 (State Bar Court case no. 02-O-14508; 04-O-15353 (Cons.)), respondent was suspended from the practice of law for two years; the execution of such suspension was stayed; and he was placed on probation for two years on condition that he be actually suspended for 60 days. In this prior disciplinary matter, respondent failed in two client matters to keep his client reasonably informed of significant developments in willful violation of section 6068, subdivision (m); willfully failed to pay a client's funds promptly in willful violation of rule 4-100(B)(4) of the Rules of Professional Conduct of the State Bar of California;<sup>10</sup> and failed to cooperate in a disciplinary investigation in willful violation of Business and Professions Code section 6068, subdivision (i). In one of the client matters, respondent also willfully failed to render appropriate accounts to the client regarding funds in willful violation of rule 4-100(B)(3). In aggravation, trust funds or property were involved, and respondent was unable to or refused to account to the client or person who was the object of the misconduct for improper conduct toward the funds or property; respondent demonstrated indifference toward rectification of or atonement for the consequences of his

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<sup>9</sup> At the hearing, the court took judicial notice of the stipulation in State Bar Court case no. 06-O-14506 and in State Bar Court case no. 02-O-14508; 04-O-15353 (Cons).

<sup>10</sup> Unless otherwise indicated, all further reference to rule(s) is to this source.

misconduct; respondent displayed a lack of candor and cooperation to victims of his misconduct or to the State Bar during disciplinary investigation or proceedings. In mitigation, respondent had no prior record of discipline over many years of practice coupled with misconduct which was not deemed serious; the disciplinary proceedings were excessively delayed, and the delay prejudiced respondent but was not attributable to him; respondent did refund monies to a client after disciplinary charges were filed; and respondent agreed to pay restitution to another client.

2. In Supreme Court matters 155233 (State Bar Court case no. 06-O-14506), the case underlying the current disciplinary proceeding, respondent was suspended from the practice of law for one year; the execution of such suspension was stayed; and respondent was placed on probation for three years subject to certain conditions of probation. In this matter, respondent stipulated that in one client matter he failed to return his client's file in willful violation of rule 3-700(D)(1).

Respondent's misconduct in the current proceeding also involves multiple acts of wrongdoing. (Standard 1.2(b)(ii).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Standard 1.2(b)(v).) After receiving Goldade's April 10, 2008 letter informing him that his law office management plan was inadequate, respondent did not immediately submit a revised law office management plan. As of the hearing in this matter, respondent still had not submitted an adequate law office management plan to the Office of Probation.

Respondent also engaged in uncharged misconduct. (Standard 1.2(b)(iii).) Respondent failed to cooperate with his probation monitor as required by the conditions of his probation imposed in Supreme Court matter S144121 (State Bar Court case no. 02-O-14508; 04-O-15353 (Cons.)) and thus violated a condition of his probation in willful violation of section 6068,

subdivision (k). Although respondent filed his quarterly reports in this matter in a timely manner, on January 28, 2008, the Office of Probation received a quarterly report from respondent's probation monitor, stating that although he had asked respondent at their first meeting to call him about five days before the quarterly reports were due, respondent had not done so for the past couple of quarters, and the probation monitor had called respondent twice that week and respondent's secretary had promised respondent would call. However, the probation monitor had not had telephone contact with respondent.

### DISCUSSION

Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) In determining the level of discipline, 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.)

Section 6093, subdivision (b), provides that violation of a probation condition constitutes cause for revocation of any probation then pending, and may constitute cause for discipline. Standard 1.7 requires that the court recommend a greater discipline in this matter than that

imposed in his prior disciplinary matters. Nevertheless, rule 562 of the Rules of Procedure of the State Bar of California provides that in probation revocation proceedings, the actual suspension recommended cannot exceed the entire period of suspension previously stayed --- in this case, one year. However, the extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) 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.)

At the hearing in this matter, the Office of Probation recommended that respondent's probation be revoked and reimposed, and that respondent be suspended for a substantial period of time; that execution of such suspension be stayed; and that respondent be actually suspended for a period greater than respondent had received in prior disciplinary matters. The State Bar further requested that respondent be ordered to comply with rule 9.20, California Rules of Court, and that respondent be placed on involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (d). The court concurs, in part, with the discipline recommendation of the Office of Probation.

Respondent was found to have violated the conditions of his probation in Supreme Court matter S155233 (State Bar Court case no. 06-O-14506) by failing to: (1) timely contact the Office of Probation and schedule a meeting with his probation deputy to discuss the terms and

conditions of his probation and thereafter to meet with his probation deputy in a timely manner; (2) timely provide a copy of his law office management plan to the Office of Probation; and (3) timely file his first quarterly report. Furthermore, respondent also failed to state in his quarterly reports due January 10 and April 10, 2008, that he had complied with his law office management plan during the preceding quarter.

The court notes that respondent's probation violations are similar in nature to his misconduct in the underlying disciplinary matter -- Supreme Court matter S155233 (State Bar Court case no. 06-O-14506). Both the current matter and the matter underlying this probation revocation proceeding involve respondent's failure to timely comply with his professional duties. In fact, had respondent timely complied with the probation condition which required him to contact the Office of Probation and schedule a meeting with his probation deputy, and had respondent actually participated in such a meeting, it is likely he would have learned that he had to submit quarterly reports in connection with each disciplinary matter, and that he still needed to submit a copy of his law office management plan to the Office of Probation, even though he had provided the plan to Rogers. Had respondent, in fact, complied with his duties, it might have been unnecessary for the Office of Probation to file this probation revocation proceeding or for the court to recommend the imposition of discipline in this matter. The court therefore finds that respondent breached conditions of his probation that are significantly related to the misconduct for which probation was imposed.

Nevertheless, there were several mitigating circumstances in this matter. Most notably was the fact that respondent acted in good faith in connection with his failure to timely submit the quarterly report due January 10, 2008, and his failure to timely submit a copy of his law office management plan to the Office of Probation. In addition, respondent displayed candor and

cooperation during the State Bar proceedings in this matter.<sup>11</sup> In addition, at the time respondent signed the stipulation in case no. 06-O-14506, he was suffering from extreme emotional difficulties due to the illnesses of his mother and father and the eventual death of his father.

However, there were some aggravating factors. Respondent has two prior records of discipline.<sup>12</sup> He engaged in multiple acts of wrongdoing and demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. He also engaged in uncharged misconduct by failing to cooperate with his probation monitor as required by the conditions of his probation imposed in his first prior disciplinary matter.

The court found two cases cited by the Office of Probation instructive but distinguishable from this matter. *In the Matter of Rose, supra*, 3 Cal. State Bar Ct. Rptr. 646 involved an attorney with a much more extensive and serious prior disciplinary record than respondent in this matter. The case, in which the Review Department recommended the attorney's disbarment, was brought as an original disciplinary proceeding, rather than as a probation revocation matter. In contrast, the respondent in *In the Matter of Gorman* (2003) 4 Cal. State Bar Ct. Rptr. 567 had a less serious disciplinary record than respondent. The Review Department in *Gorman* recommended the revocation of the attorney's probation and stayed suspension plus probation and 30-days of actual suspension. The court finds that the appropriate discipline in the current proceeding should be less than that recommended in *Rose* but more than that recommended in *Gorman*. Balancing all relevant mitigating and aggravating factors, and after considering the standards and case law noted above, the court agrees with the Office of Probation that respondent's probation should be revoked and reimposed, and that respondent should be

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<sup>11</sup> Respondent also actively participated in the underlying disciplinary matter.

<sup>12</sup> In imposing discipline in respondent's second disciplinary matter, it was noted that had this matter be considered with respondent misconduct in his first disciplinary matter, it would not have resulted in any increase in discipline in that first matter.



suspended for a substantial period of time; that execution of such suspension should be stayed; and that respondent should be actually suspended for a period greater than respondent had received in prior disciplinary matters. This court believes that the public will be adequately protected by the imposition of such discipline.<sup>13</sup>

### **RECOMMENDED DISCIPLINE**

Accordingly, the court hereby recommends to the Supreme Court that respondent's probation pursuant to the Supreme Court order in matter S155233 (State Bar Court 06-O-14506) be revoked; that the previous stay of execution of the one-year suspension be lifted; and that respondent **CARY OSCAR LINDSTROM** be suspended from the practice of law for one year; that execution of such suspension be stayed; and that respondent be placed on probation for two years on the following conditions:

1. That respondent must be actually suspended from the practice of law during the first 75-days of the period of probation;
2. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
3. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
4. Within thirty (30) days from the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation

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<sup>13</sup> Respondent is cautioned that failure to strictly comply with any probation conditions imposed in this matter could result in substantial discipline.

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;

5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.

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

6. Subject to assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions; and

7. Within thirty (30) days after the effective date of the discipline herein, respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to: (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6)

train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to respondent's misconduct in the current proceeding.

It is not recommended that respondent provide satisfactory proof of attendance at a session of the State Bar Ethics School and passage of the test given at the end of that session, as respondent was ordered to complete Ethics School in connection with Supreme Court matter S144121 (State Bar Court case no. 02-O-14508; 04-O-15353 (Cons.)).

It is also not recommended that respondent provide proof of passage of the Multistate Professional Responsibility Examination (MRPE) to the Office of Probation, as respondent was ordered to pass the MPRE in connection with Supreme Court matter S144121 (State Bar Court case no. 02-O-14508; 04-O-15353 (Cons.)) and recently passed the examination.

#### **REQUEST FOR INVOLUNTARY INACTIVE ENROLLMENT**

The Office of Probation also seeks an order placing respondent on involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (d), for failing to comply with the terms of his disciplinary probation. However, as the court is only recommending a 75-day period of actual suspension in this matter, it is likely that if respondent were placed on involuntary inactive status at this time pursuant to section 6007, subdivision (d), by the time the Supreme Court order imposing discipline in this matter became effective, respondent would have been precluded from practicing law for a longer period than that recommended or imposed as the discipline in this matter. It would therefore be unfair to involuntarily enroll respondent to inactive status as a result of his probation violations. The court therefore denies the Office of Probation's request to enroll respondent involuntarily inactive pursuant to section 6007, subdivision (d).

#### **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 section 6140.7 and as a money judgment.

Dated: September \_\_\_\_, 2008

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PAT E. McELROY  
Judge of the State Bar Court