

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-PM-14735-RAP
)	
LISA BOEGLER NEVAREZ,)	ORDER GRANTING MOTION TO REVOKE
)	PROBATION AND ORDER OF
Member No. 217520,)	INVOLUNTARY INACTIVE ENROLLMENT
)	(Bus. & Prof. Code, § 6007, subd. (d)(1))
<u>A Member of the State Bar.</u>)	

Introduction

In this probation revocation proceeding, the State Bar's Office of Probation (OP) charges respondent **LISA BOEGLER NEVAREZ**¹ with ten separate violations of the disciplinary probation that the Supreme Court imposed on her in its December 10, 2012, order in *In re Lisa Boegler Nevarez on Discipline*, case number S205800 (State Bar Court case numbers 12-C-10462 and 12-C-10496) (*Nevarez I*). OP is represented by Supervising Attorney Terrie Goldade. Respondent did not appear.

As discussed *post*, the court finds, by a preponderance of the evidence (Bus. & Prof. Code, § 6093, subd. (c);² Rules Proc. of State Bar, rule 5.311), that respondent is culpable on five of the ten charged probation violations. In light of the five found violations, the court will grant the motion to revoke respondent's probation and recommend that respondent be again placed on

¹ Respondent was admitted to the practice of law in California on February 14, 2000, and has been a member of the State Bar of California since that time. She has one prior record of discipline.

² Except where otherwise indicated, all further statutory references are to this code.

one year's stayed suspension and three years' probation with conditions, including a one-year actual suspension and alcohol and drug testing to verify her abstinence from alcohol and drugs. In addition, the court will order that respondent be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (d)(1).

Pertinent Procedural History

OP filed the present motion to revoke probation on August 23, 2013. On August 23, 2013, OP also properly served the motion on respondent by certified mail, return receipt requested at her 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 August 23, 2013, OP also mailed a courtesy copy of the motion to respondent at her latest address on the State Bar's records by first class mail, regular delivery.

Respondent did not file a response to the motion to revoke. Nor did she otherwise appear in this probation revocation proceeding.

Findings of Fact and Conclusions of Law

Probation Violations

In *Nevarez I*, respondent and the State Bar's Office of the Chief Trial Counsel (State Bar) stipulated that respondent's October 2007 conviction for driving under the influence of drugs and alcohol and her January 2012 conviction for driving under the influence of alcohol³ did not involve moral turpitude, but did involve "other misconduct warranting discipline." (See, e.g., *In*

³ Respondent's October 2007 and January 2012 convictions are respondent's second and third driving under the influence (DUI) convictions, respectively.

re Kelley (1990) 52 Cal.3d 487, 494.) In accordance with the parties stipulation in *Nevarez I*, the Supreme Court placed respondent on one year's stayed suspension and three years' probation with conditions, including thirty days' actual suspension.

In the present motion to revoke probation, OP charges that respondent willfully violated the following conditions of her State Bar disciplinary probation.

1. Probation-Deputy-Meeting Condition

Under the probation-deputy-meeting condition of respondent's State Bar disciplinary probation, respondent was required, within the first 30 days of her disciplinary probation (i.e., January 9, 2013, to February 8, 2013), to contact OP and schedule a meeting with her assigned State Bar probation deputy to discuss these terms and conditions of her disciplinary probation and to thereafter meet with the probation deputy either on the phone or in person as directed by OP.

On February 5, 2013, respondent contacted OP timely and made an appointment to meet with her State Bar probation deputy by telephone on February 7, 2013. Respondent, however, did not meet with the deputy on February 7, 2013, because she was in custody in the Orange County Jail from about February 7, 2013, through June 1, 2013. Respondent notified OP of her incarceration in a letter dated April 18, 2013. (See *Jones v. Flowers, supra*, 547 U.S. at p. 229.)

Following her released from jail on Saturday, June 1, 2013, respondent promptly met with her assigned probation deputy by telephone on Tuesday, June 4, 2013.

OP charges that respondent willfully violated the probation-deputy-meeting condition of her State Bar disciplinary probation because did not meet with her assigned probation deputy on until June 4, 2013. In light of respondent's incarceration from about February 7 through June 1, 2013, the record fails to establish the charged violation of respondent's probation-deputy-meeting condition. Accordingly, the charged violation of that condition is DISMISSED with prejudice.

2. Quarterly-Reporting Condition

Under the quarterly-reporting condition of respondent's State Bar disciplinary probation, respondent is required, on every January 10, April 10, July 10, and October 10, to *submit* to OP, a written report stating, under penalty of perjury, inter alia, "whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all the conditions of probation during the preceding calendar quarter." Respondent's first quarterly report was due no later than April 10, 2013.

OP charges that respondent willfully violated her quarterly-reporting condition because respondent did not submit her report that was due on April 10, 2013, until June 7, 2013. However, in light of respondent's incarceration from about February 7 through June 1, 2013, the record fails to establish the charged violation of respondent's quarterly-reporting condition. Accordingly, the charged violation of that condition is also DISMISSED with prejudice.

3. Criminal-Probation-Compliance Condition

As a condition of her State Bar probation, respondent is required to (1) comply with all of the conditions of the five-year criminal probation that the Orange County Superior Court imposed on respondent after her January 2012 DUI conviction and (2) to report, to the State Bar's OP under penalty of perjury with each of her quarterly reports, her compliance or noncompliance with her criminal probation during the preceding calendar quarter. In the quarterly report that respondent submitted to OP on June 7, 2013, respondent inconsistently stated both that she had complied with the conditions of her criminal probation during the applicable reporting period and that her criminal probation had been modified, terminated, or expired during the applicable reporting period.

OP charges that respondent willfully violated the criminal-probation-compliance condition of her State Bar disciplinary probation because respondent violated her criminal

probation by driving while under the influence of alcohol in early February 2013 and because respondent failed to clearly disclose that violation of her criminal probation to the State Bar's OP in the quarterly report respondent submitted to OP on June 7, 2013. Respondent denied that she violated her criminal probation in a letter she mailed to OP on about May 24, 2013, and in an email that she sent to her assigned State Bar probation deputy on June 11, 2013.

Notwithstanding respondent's prior contentions to OP to the contrary, the superior court's February 8, 2013, amended probation order in respondent's criminal cases (OP's exhibit 3 at pages 85-88) clearly establishes that respondent violated her criminal probation by driving under the influence of drugs or alcohol in early February 2013 and that, on February 8, 2013, the superior court therefore revoked respondent's formal five-year criminal probation. Because respondent violated her criminal probation, respondent was incarcerated in the Orange County Jail from about February 7, 2013, until June 1, 2013.

The record clearly establishes that respondent willfully violated the criminal-probation-compliance condition of her State Bar disciplinary probation when she violated her criminal probation by again driving under the influence in early February 2013. The record also establishes that respondent willfully violated her criminal-probation-compliance condition by failing to clearly disclose, in the quarterly report she submitted to the State Bar's OP on June 7, 2013, that violation of her criminal probation and the resulting revocation of her formal criminal probation in February 2013.

4. Drug-and-Alcohol-Testing Condition

Under the drug-and-alcohol-testing condition of respondent's State Bar disciplinary probation, so long as respondent is a participant in the Orange County Superior Court's strenuous DUI Court Program, respondent is not required submit to and pay for monthly testing by a State Bar approved laboratory to verify her abstinence from drugs and alcohol.

Furthermore, if respondent's participation in the DUI Court Program is terminated, respondent is required to give OP written notice of the termination within 20 days and to begin submitting and paying for monthly drug and alcohol testing by a State Bar approved laboratory. The superior court's February 8, 2013, amended probation order referred to *ante* establishes that respondent's participation in the DUI Court Program was terminated on February 8, 2013, when the superior court revoked her formal criminal probation.

OP charges that respondent willfully violated her drug-and-alcohol-testing condition because respondent failed to give OP written notice that she was terminated from the DUI Court Program by February 18, 2013, which was 10 days after respondent's termination from the program, and because respondent failed to thereafter undergo monthly drug and alcohol testing at a State Bar approved laboratory in March, April, May, June, July, and August 2013.

In light of respondent's incarceration from about February 7 through June 1, 2013, the record fails to establish that respondent willfully violated her drug-and-alcohol-testing condition when she failed notify OP of her termination from the DUI Court Program by February 18, 2013. Likewise, the record fails to establish that respondent willfully violated her testing condition when she failed to undergo monthly drug and alcohol testing in March, April, and May 2013. Accordingly, those charged violations of respondent's testing condition are DISMISSED with prejudice.

The record establishes, by a preponderance of the evidence, that respondent willfully violated her drug-and-alcohol-testing condition when she failed to undergo monthly drug and alcohol testing at a State Bar approved laboratory after she was released from jail in June, July, and August 2013.⁴

⁴ In respondent's July 10, 2013, quarterly report, which respondent submitted to OP on July 8, 2013, respondent states that she lacked the financial ability to pay for the testing required under her drug-and-alcohol-testing condition. The court rejects respondent's unsupported and

B. Aggravating & Mitigating Circumstances

Aggravating Circumstances

Prior Record of Discipline

As noted *ante*, respondent has one prior record of discipline—*Nevarez I*—which is an aggravating circumstance under standard 1.2(b)(i).

As noted *ante*, in *Nevarez I*, respondent stipulated that her October 2007 conviction for driving under the influence of drugs and alcohol and her January 2012 conviction for driving under the influence of alcohol involved other misconduct warranting discipline.

On March 25, 2007, after taking two Vicodin painkillers and two shots of vodka, respondent drove her vehicle and crashed into the rear of a car stopped at a stop sign. Respondent's blood alcohol level (BAC) was .27 percent. On October 31, 2007, respondent entered into a plea agreement and was convicted of violating Vehicle Code sections 23152(a) (driving under the influence of alcohol and drugs) and 23152(b) (driving with a BAC of .08 percent or more). As noted in footnote 3 *ante*, respondent's October 2007 DUI conviction is respondent's second DUI conviction. Respondent's first DUI conviction was in December 2002.

On October 24, 2011, respondent drove her vehicle with a BAC of .14 percent and crashed into a car that was making a left-hand turn in front of her. The other car was "totaled," and its driver was transported to the hospital in an ambulance. On January 13, 2012, respondent entered into a plea agreement and was convicted of violating Vehicle Code sections 23152(a) (driving under the influence of alcohol and drugs) and 23152(b) (driving with a BAC of .08

self-serving statement. Moreover, assuming *arguendo* that respondent actually lacked the ability to pay for the required testing, she is not to be disciplined for violating a probation condition for which she lacked the ability to comply. Instead, she is being disciplined for not complying with the condition without first attempting to be relieved from the condition based on her inability to pay. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868, fn. 4.)

percent or more). Respondent was sentenced to five years' formal probation and enrolled in the Orange County DUI Court Program. The participants in that program are tested for drug and alcohol three times each week and required to attend between three and seven self- help programs (e.g., Alcoholics Anonymous) each week. Again, as noted in footnote 2 *ante*, respondent's January 2012 DUI conviction is respondent's third DUI conviction.

There were no aggravating circumstances in in *Nevarez I*. In mitigation, respondent cooperated by entering into a stipulation as to facts, conclusions, and dispositions.

Multiple Acts

Respondent's present misconduct involves multiple acts of misconduct (five violations of respondent's State Bar disciplinary probation). (Std. 1.2(b)(ii).)

Mitigating Circumstance

The record does not establish any mitigating circumstance.

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 1.7(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."

An attorney's 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.) Moreover, respondent failure to respond to OP's motion to revoke her probation strongly suggests that respondent is indifferent to her duty to obey Supreme Court disciplinary orders.

In short, the court concludes that respondent's probation violations require the imposition of 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. 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. In addition, the attorney in *Howard* (like respondent) did not appear in the probation revocation proceeding.

In short, the court concludes that the appropriate level of discipline includes a one-year actual suspension. Moreover, even though not raised by OP, the court independently concludes that it is also necessary to require that respondent to demonstrate that she is now willing and capable of fully engaging in the rehabilitative process and strictly complying with the probation conditions that the Supreme Court imposed on her in *Nevarez I* by imposing substantially identical conditions on her for three years prospectively. (*In the Matter of Meyer, supra*, 3 Cal. State Bar Ct. Rptr. at p. 705.) The court also concludes that respondent's discipline should again include a one-year stayed suspension.

The court does not recommend that respondent be again ordered to take and pass a professional responsibility examination because she was ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) in the Supreme Court's December 10, 2012, order in *Nevarez I*. The MPRE portion of the Supreme Court's December 10, 2012, order will remain in effect even after respondent's probation is revoked in this proceeding. Accordingly, if respondent fails to take and pass the MPRE within the time prescribed in the Supreme Court's December 10, 2012, order in *Nevarez I* (or as that time is modified by the State Bar Court), respondent will be suspended from the practice of law until she provides proof that she has passed the examination. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

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Recommended Discipline

The court recommends that the probation imposed on respondent **LISA BOEGLER NEVAREZ** in the Supreme Court's December 10, 2012, order in case number S205800 (State Bar Court case numbers 12-C-10462 and 12-C-10496) be revoked. The court further recommends that Lisa Boegler Nevarez again be suspended from the practice of law for one year, that execution of that one-year suspension be stayed, and she again be placed on probation for three years subject to the following conditions:

1. Nevarez is suspended from the practice of law for the first year of probation.
2. Nevarez 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, Nevarez is to contact the State Bar's Office of Probation in Los Angeles and to schedule a meeting with her assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Nevarez must meet with the probation deputy either in-person or by telephone. Thereafter, Nevarez must promptly meet with the probation deputy as directed and upon request of the Office of Probation.
4. Nevarez 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, her 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, Nevarez is to maintain, with the State Bar's Office of Probation, her current home address and telephone number (Bus. & Prof. Code, § 6002.1, subd. (a)(5)). Nevarez's home address and telephone number are not to be made available to the general public unless her home address is also her official address on the State Bar's Membership Records. (Bus. & Prof. Code, § 6002.1, subd. (d).) Nevarez 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. Nevarez 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, Nevarez must state, under penalty of perjury under the laws of the State of California, whether she 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, Nevarez 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, Nevarez is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to her, whether orally or in writing, relating to whether she is complying or has complied with the conditions of this probation.
7. Within the first year of her probation, Nevarez is to attend and satisfactorily complete the State Bar's Ethics School and to provide satisfactory proof of her 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 or at 1149 South Hill Street, Los Angeles, California 90015-2299. 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 Nevarez's Minimum Continuing Legal Education ("MCLE") requirements; accordingly, she is ordered not to claim any MCLE credit for attending and completing this program. (Accord, Rules Proc. of State Bar, rule 3201.)
8. Nevarez must attend at least one meeting of Alcoholics Anonymous or The Other Bar each week. As a separate reporting requirement, Nevarez must provide satisfactory proof of her monthly attendance to the Office of Probation. The proof must be delivered or postmarked no later than the tenth day of the following month.
9. Nevarez must abstain from using or possessing any alcoholic beverages and any narcotics, dangerous, or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
10. Nevarez must select a licensed medical laboratory approved by the Office of Probation. She must arrange to have the laboratory perform ethyl glucuronide tests and 10-panel drug tests on samples of her blood or urine collected by the laboratory during the first five days of every month. In addition, during the first year of Nevarez's new probation, the Office of Probation is directed to randomly require Nevarez to have three additional ethyl glucuronide tests performed by the laboratory on samples of her blood or urine collected by the laboratory no later than 12 hours after Nevarez is given actual notice that the Office of Probation requires the additional test.

For purposes of the three random alcohol tests, during the first year of her probation, Nevarez must maintain, with the Office of Probation, a current telephone number at which she can ordinarily always be reached. (This telephone number is not to be made available to the general public unless it is also the office telephone number that Nevarez maintains on the State Bar's Membership Records. [Bus. & Prof. Code, § 6002.1, subd. (d).]) Nevarez must return any call from the Office of Probation concerning alcohol testing within 12 hours.

For each of the foregoing tests, two samples are to be taken. The first of each sample is to be tested; the second specimen is to be stored in a manner that will ensure the specimen may be accurately tested in the future. The tests must be performed by the

laboratory pursuant to Department of Transportation guidelines and testing must be observed. Nevarez must comply with all of the laboratory's requirements regarding specimen collection and the integrity of specimens.

For each of the foregoing tests, Nevarez must cause the laboratory to provide to the Office of Probation a screening report containing the analysis of her blood and urine samples within 10 days after each sample is collected. In the event of a positive test result, Nevarez is to be given an additional five days to request that the second specimen be tested at her expense by the original laboratory or by another approved laboratory and to meet with a Medical Review Officer employed or approved by the laboratory to discuss the results. If the laboratory determines that the initial positive test was a false or "innocent" positive, the Office of Probation must accept the determination.

Respondent is required to pay for all of the foregoing tests and reports.

11. Upon the request of the Office of Probation, Nevarez must provide it with medical waivers and access to all of her medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, the Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.
12. Nevarez's new three-year probation will begin on the effective date of the Supreme Court order in this probation revocation proceeding. At the expiration of this new three-year probation, if Nevarez 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 **LISA BOEGLER NEVAREZ** 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.

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.

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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 **LISA BOEGLER NEVAREZ** 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 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: October 25, 2013.

RICHARD A. PLATEL
Judge of the State Bar Court