PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

FILED February 23, 2007

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **FRANCIS T. FAHY**, Member of the State Bar.	)	**01-O-02011** **OPINION ON REVIEW**

I. INTRODUCTION

Respondent, Francis T. Fahy, requests review of the decision of a hearing judge finding culpability for his failure to notify a client of receipt of funds, failure to maintain client funds in trust, misappropriation involving moral turpitude, and failure to promptly pay client funds. The hearing judge recommended that respondent be actually suspended from the practice of law for eighteen months. Respondent disclaims culpability on all counts; the State Bar urges that respondent should be disbarred.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12; Rules Proc. of State Bar, rule 305(a); *In re Morse* (1995) 11 Cal.4th 184, 207) and find clear and convincing evidence to support the hearing judge's findings of culpability, although we modify her aggravation and mitigation determinations as discussed *post*. We do not adopt the recommended discipline of 18 months' actual suspension but instead recommend two years' actual suspension, with the added condition that respondent shall remain on actual suspension until he establishes his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.[1]

[1]Unless noted otherwise, all further references to "standard(s)" are to this source.

II. DISCUSSION

A. Factual and Procedural Background

Respondent was admitted to the practice of law on July 31, 1990, and has no prior record of discipline. In June 1999, Barbara Neal employed respondent to represent her in a personal injury action arising out of a slip-and-fall accident that occurred in October 1998 while she was at a movie theater owned by Dolby Labs, Inc. Neal executed a retainer agreement providing for attorneys fees of 33 1/3 percent of any amount recovered without a lawsuit and 40 percent of any recovery after a lawsuit was initiated. The retainer agreement authorized respondent to endorse her signature to all settlement checks "provided that [respondent] immediately distributes to client the client's share of the recovery." Thereafter, respondent negotiated with Dolby Labs' insurer, Kemper Insurance Company (Kemper) in an attempt to settle Neal's personal injury claim. Although Kemper denied liability of its insured, it sent respondent a check for medical costs in the amount of $5,000, dated September 30, 1999. Respondent endorsed Neal's signature on the check, and on October 4, 1999, he deposited it into his client trust account maintained at the Bank of America (CTA) without informing Neal he had received the funds.[2]

Respondent filed a complaint on Neal's behalf in the San Francisco County Superior court on October 13, 1999, but then advised her by letter dated November 20, 1999 (Withdrawal Letter) that he would no longer be able to represent her due to his concerns about the City and County of San Francisco's lien recovery ordinance.[3] He did not mention the insurance payment

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[2]Respondent testified that he told Neal that he had received the $5,000 check, although he did not recall the circumstances of the conversation. The hearing judge did not believe respondent's testimony about the putative conversation.

[3]In this letter, respondent wrote "I recently received a copy of the City and County of San Francisco's lien ordinance. A copy of it is enclosed. It is so draconian that I am afraid to continue to represent you in the referenced matter. I am afraid that due to a clerical error or oversight, I could not only lose my livelihood, and my bar card, but also be subject to conviction for a crime of moral turpitude and receive a prison sentence. I am not willing to take such a risk. Therefore, this office and I are no longer able to represent you in the refence [sic] matter."

in that letter. Respondent further testified that he sent a second letter on November 20, 1999, the same day that he sent the Withdrawal Letter, advising Neal of the receipt of the $5,000. Neal testified she never received the second letter. The hearing judge found her testimony to be credible and disbelieved respondent's testimony about the second letter.

Between March and May 2000, the balance in respondent's CTA fell below $3,333.33 on several occasions and in May 2000 it dropped as low as 616.72.[4] By May 2000, respondent was formally substituted out of Neal's case, and thereafter he arranged for Neal to pick up her file in June 2000 when she retained new counsel, Shelley Buchanan. Even after he withdrew from Neal's case, respondent never informed Neal or Buchanan about the insurance proceeds. Neal testified that she first learned about the $5,000 during her deposition in November 2000.[5] The hearing judge found this testimony to be credible. After Buchanan demanded reimbursement of the insurance proceeds on November 20, 2000, respondent sent her a check for $5,000 on November 27, 2000, but advised her to retain the funds in trust since respondent had a claim for his fee and costs.

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[4]According to the retainer agreement, respondent would receive as payment for his services one-third of the amount recovered if settled without suit, or 40 percent of the amount recovered after suit was instituted. Thus, respondent may have been entitled to $1,666.67 in fees since no lawsuit had been filed when he settled with Kemper. Respondent was required to maintain at least $3,333.33 on Neal's behalf, but the balance in his CTA dipped to $2,343.41 on March 23, 2000; $843.41 on March 27, 2000; $2,343.41 on April 6, 2000; $2,488.72 on April 27, 2000; $1,896.72 on May 17, 2000; and $616.72 on May 30, 2000. The hearing judge found that the account balance fell below the required minimum on additional occasions (e.g., $2,283.38 on July 13, 2000; $2,961.97 on November 14, 2000; and $2,703.97 on November 15, 2000), but these findings are not supported by the record because the bank statements from June to November 2000 were not admitted.

[5]According to the record, Neal and Buchanan participated in a settlement conference on an undisclosed date in November 2000 where, according to Buchanan, "some sort of off-handed remark about some payment" was made. Apparently, Buchanan did not follow up on the comment and it was not until Neal's deposition occurred approximately one week later that the attorney for the defendant revealed that a medical payment check had already been issued.

On December 16, 2003, the State Bar filed a four-count Notice of Disciplinary Charges (NDC) alleging that respondent failed to notify Neal of his receipt of the insurance proceeds (Rules Prof. Conduct, rule 4-100(B)(1)),[6] failed to maintain client funds in trust (rule 4-100(A)), committed an act involving moral turpitude by misappropriating Neal's funds (Bus. & Prof. Code, § 6106),[7] and failed to promptly pay Neal's funds (rule 4-100(B)(4)). After a three-day trial[8] commencing on January 25, 2005, the hearing judge found respondent culpable on all four charged counts. The hearing judge also found the following aggravating circumstances: multiple acts of wrongdoing (std. 1.2(b)(ii)); indifference toward rectification or atonement for his misconduct (std. 1.2(b)(v)); conduct surrounded by concealment and dishonesty (std. 1.2(b)(iii)); uncharged misconduct due to the failure to communicate with Neal and the attempt to mislead Buchanan (std. 1.2(b)(iii)); and disrespect to the court resulting in harm to the administration of justice (std. 1.2(b)(iv)).[9]

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[6]Unless noted otherwise, all further references to "rule(s)" are to the Rules of Professional Conduct.

[7]Unless noted otherwise, all further references to "section(s)" are to the Business and Professions Code.

[8]Prior to trial, respondent filed innumerable pleadings, including a Demand for a Jury Trial, three Motions to Dismiss, a Motion to Strike and a Motion to Enforce a Settlement Agreement. The hearing judge denied each of these matters. Respondent does not here contest these rulings and we do not address them further.

[9]Throughout these proceedings, in letters to the court and approximately fifteen filed pleadings, respondent made a series of false and demeaning remarks about the State Bar, its prosecutor in this case, the State Bar Court, and the hearing judge, commencing with his answer to the NDC and continuing until he exhausted his post-trial motions. Such epithets include, but are not limited to, repeated descriptions of the State Bar and its prosecutors as "frauds, liars and thugs," "hillbilly scum," "criminals," "gangsters," and "incompetent and malignant bunch of yokels."

Respondent also referred to the Hearing Department as a "kangaroo court" that not only "tolerates corruption and perjury" but also employs "jack-booted thugs" who use "nazi tactics." He described the hearing judge as a "willfully corrupt," "prolific liar" who "falsifies the evidence," suffers from "perversion and vile racism" and "needs her head examined." He also claimed the hearing judge "intentionally, fraudulently and maliciously suppressed . . . evidence

The hearing judge found the following factors in mitigation: the absence of a prior record of discipline over nine years of practice (std. 1.2(e)(i)); extreme emotional difficulties due to a "troublesome family situation" (std. 1.2(e)(iv)); pro bono activities; and respondent's repayment of the insurance funds prior to the filing of an NDC (std. 1.2(e)(vii)). The hearing judge did not find an extraordinary demonstration of good character (std. 1.2(e)(vi)), since respondent's two character witnesses were either untrustworthy or unaware of the extent of respondent's misconduct, and collectively, they did not represent a wide range of references in the legal and general communities. Due to the absence of demonstrated prejudice, the hearing judge also declined to find mitigation for the State Bar's delay in conducting the disciplinary proceedings.

The hearing judge recommended that respondent be suspended for three years and until he proves compliance with standard 1.4(c)(ii), stayed, and that he be placed on five years' probation on the condition that he be actually suspended for 18 months.

B. Failing to Notify Neal of the Insurance Proceeds (Rule 4-100(B)(1))

We find meritless respondent's contention that the evidence does not support a finding that he failed to notify Neal of his receipt of the Kemper insurance check. Although respondent testified that he told Neal about the Kemper insurance check within one week of receiving it, he could not recall how he informed her. Respondent's wife, who worked as his legal assistant, also testified that she attended meetings with Neal at respondent's office where respondent not only told Neal about the Kemper check but also that it would have to be retained in trust pending

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last in . . . her possession" and should be disbarred. Simply because the hearing judge, State Bar prosecutor, and complaining witness are African American, respondent expected the hearing judge to remove herself from the case due to bias. He also threatened to sue the hearing judge but offered to "drop his claims to be filed in the U.S. District Court" in exchange for a dismissal of all charges.

During trial, respondent threw documents on the floor in court instead of handing them to the prosecutor. In a post-trial motion, he referred to the Supreme Court Chief Justice as a racketeering boss, and in another pleading, respondent threatened to file a lawsuit "against Chief Justice George as Chief administrator of the State Bar and his minions and henchmen for the [sic] their scheme to extort California attorneys, theft of the public's money and fraud against the citizens of the State of California and the United States of America."

resolution of the outstanding lien asserted by the City and County of San Francisco. Respondent's wife could neither recall when these meetings took place nor how many occurred. She further admitted that her memory of these events had faded due to the passage of time. Respondent also relied on a letter he purportedly sent to Neal on November 20, 1999, the same date he sent his Withdrawal Letter to her. In this second letter, respondent advised Neal of the $5,000 insurance check, which he said he planned to hold in trust for medical lien holders pending further negotiation with the City and County of San Francisco.[10] Respondent testified that he sent both letters on the same date by United States registered mail, return receipt requested.

Neal testified that respondent never informed her of his receipt of the Kemper insurance proceeds either orally or in writing, that she met with respondent only once when she retained him, and that the only correspondence she received from him was the Withdrawal Letter. Neal's attorney, Buchanan, testified that she personally picked up Neal's file from respondent and, after careful review, she did not find a copy of the second letter or any other references to the $5,000. Furthermore, Buchanan testified that respondent never mentioned to her that he had received the Kemper check in any of their correspondence or conversations. According to Neal and Buchanan, the first that either of them learned of the Kemper check was during Neal's deposition in November 2000, more than a year after respondent received the funds.

As noted *ante*, the hearing judge did not deem credible the testimony of respondent or his wife and resolved the conflicting evidence regarding the issue of notice of the $5,000 in favor of Neal. We give great deference to the judge's credibility finding and we adopt it. "The hearing [judge] is best suited to resolving credibility questions, because [he or she] alone is able to

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[10]This second letter stated: "This will confirm that that [sic] you told me you were busy and asked me to sign [the check] for you. I did so and deposited the $5,000 in my attorney-client trust account. ¶ This will also serve to confirm . . . that I am unable to release any of the anticipated med pay funds directly to you but must hold them for medical care lien holders . . . . ¶ . . . As I also explained to you . . . I said I would make an effort to persuade the City & County to allow part of the med pay to be paid to medical care providers other than them."

observe the witnesses' demeanor and evaluate their veracity firsthand. [Citation.]" (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 655; see also Rules Proc. of State Bar, rule 305(a).) Moreover, the record in this case amply supports the hearing judge's credibility determination and demonstrates how inherently implausible is respondent's claim that he sent a second letter notifying Neal of the $5,000. Although the two letters supposedly were written and sent on the same day, neither letter references the other, even though one letter obligates respondent to complete additional work for Neal while the other terminates their relationship. Furthermore, the telephone number listed on the letterhead on the second letter differs from the telephone number listed on the Withdrawal Letter, and the number also differs from respondent's other correspondence from this time period. In fact, the telephone number on the second letter does not begin to appear on respondent's correspondence until 2003, approximately two years *after* respondent allegedly mailed that letter.[11]

Additionally, in respondent's written responses to a State Bar investigator's request for information, dated July 14, and July 26, 2001, he referenced the Withdrawal Letter, yet failed to mention the second letter to Neal. Accordingly, we leave undisturbed the hearing judge's culpability finding that respondent failed to notify Neal of the insurance proceeds in violation of rule 4-100(B)(1).

C. Failing to Maintain Client Funds in Trust Account (Rule 4-100(A))

Respondent does not dispute that he was required to maintain $3,333.33 in trust for Neal. Even though his CTA fell below that amount on several occasions, he testified that he believed Neal's funds were "most likely" held in "trust instruments" at Sanwa Bank. According to respondent, he withdrew $1,875 of Neal's funds on January 21, 2000, and $1,280 on May 30,

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[11]Respondent's correspondence between June 1999 to July 2001 (including his November 20, 1999, Withdrawal Letter that Neal received) lists a telephone number of (415) 621-4548, whereas the letter respondent claims he sent Neal notifying her of his receipt of the Kemper check, also dated November 20, 1999, reflects a telephone number of (415) 759-5834 in a different font size. This latter number does not begin appearing on respondent's correspondence until December 2003.

2000, from his CTA to purchase certificates of deposit or money market certificates on her behalf.[12] Other than a single hand-written page from his ledger, which the hearing judge deemed "suspect," respondent failed to produce any documents to support his contention that Neal's funds were actually held in trust at Sanwa Bank. Indeed, respondent retained copies of interest-bearing money instruments maintained on behalf of other clients, but he could not explain the absence of such copies regarding Neal's funds, nor did he know what happened to the receipts for the money. In addition, respondent could not recall how the Sanwa Bank instruments identified funds as belonging to Neal or who cashed the instruments maintained on her behalf.

Respondent's failure to corroborate his testimony with evidence that one would have expected to be produced is a strong indication that his testimony is not credible.[13] (*In the Matter of Oheb* (Review Dept 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, fn. 13; see also *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 311 [an attorney's failure to keep adequate records is inherently suspicious and can support an inference that his testimony is untrue].) The hearing judge did not believe respondent maintained Neal's funds in trust with Sanwa Bank, and neither do we. Accordingly, we adopt the hearing judge's culpability finding of failing to maintain Neal's funds in trust (rule 4-100(A)).

D. Moral Turpitude (Section 6106)

Respondent contends that he is not culpable of misappropriation, and that in fact "he did the right thing" in withdrawing Neal's funds and placing them with Sanwa Bank. Respondent is wrong. The mere fact that his CTA balance repeatedly fell below the amount he was required to

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[12]Even if, *arguendo*, this version of events were true, respondent would have been required to maintain at least $1,458.33 in trust between January 21, 2000, and May 30, 2000, when he withdrew $1,200 purportedly to purchase a second money instrument with Sanwa Bank. Despite this, his CTA balance fell to $843.41 on March 27, 2000.

[13]Respondent asserts he could not access his "ledger accounts" that were stored in the basement of the building where he maintained his law office, yet he never explained why he failed to obtain duplicate copies of relevant records from Sanwa Bank, claiming merely that his branch office was moved and then ultimately closed.

maintain in trust on Neal's behalf supports a finding of wilful misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474). Although not every misappropriation that is wilful necessarily involves moral turpitude (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357,1367), here the various acts of concealment of the $5,000 " 'used by [respondent] to further his position were dishonest and involved moral turpitude within the meaning of . . . section 6106 . . . .' " (*Coppock v. State Bar* (1988) 44 Cal.3d 665, 679.) Moreover, respondent's failure to produce financial records "supports an inference that he converted the proceeds to his own use. [Citation.]" (*Greenbaum v. State Bar* (1976) 15 Cal.3d 893, 900; see also *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 515, 516 [misappropriation of client funds for personal use constitutes moral turpitude].) We therefore find clear and convincing evidence that respondent's conduct in concealing the $5,000 from Neal for over one year, and in allowing his CTA account on several occasions to be depleted below the amount he was obligated to maintain on her behalf, demonstrates that respondent wilfully misappropriated the Kemper insurance proceeds, and that these actions involved moral turpitude within the meaning of section 6106. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034; *Grim v. State Bar* (1991) 53 Cal.3d 21, 30; *Bate v. State Bar* (1983) 34 Cal.3d 920, 923.)

E. Failing to Promptly Pay Client Funds (Rule 4-100(B)(4))

Since respondent did not disburse the medical payment to Neal until more than one year after he received the funds from Kemper, the hearing judge concluded that respondent failed to promptly pay client funds as requested. (Rule 4-100(B)(4).) Respondent argues that he promptly paid the funds within one week after Neal's successor counsel sent him a demand letter on November 20, 2000. Without doubt, a payment request is a required element for a rule 4-100(B)(4) violation.[14] (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 126-127; *In the Matter of*

[14]This rule provides that "A member shall: [¶] . . . [¶] (4) Promptly pay or deliver, *as requested by the client*, any funds, securities, or other properties in the possession of the member which the client is entitled to receive." (Emphasis added.)

Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr 178, 188.) The State Bar contends that the express terms of the retainer agreement in effect constituted a continuing request by Neal for payment once respondent had endorsed the Kemper check, which occurred in October 1999.[15] We agree. The retainer agreement reflects the mutual understanding between Neal and respondent that he was only authorized to endorse the Kemper check provided he "immediately" distributed the funds to Neal. This contractual provision obviated Neal's express demand for the insurance proceeds and constituted an implied and continuing request for payment of the funds once respondent had endorsed Neal's signature. (See *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708, 718-719 [client's requests for settlement documentation implied a request for disbursement of the settlement funds].)

III. DISCIPLINE

A. Factors in Aggravation and Mitigation

1. Aggravation

We agree with the hearing judge's determination that respondent engaged in multiple acts of wrongdoing. Respondent failed to notify Neal of his receipt of the insurance proceeds, he did not maintain the funds in a trust account, he willfully misappropriated the proceeds for his own benefit and he failed to promptly pay her. These acts support a finding in aggravation that respondent engaged in multiple acts of misconduct. (See *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627 [two violations of failure to supervise resulting in trust fund violations, plus improper threat to bring criminal action constituted multiple acts of wrongdoing in aggravation].) However, we do not consider this as strong evidence in aggravation. (*In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170, 177 [one client matter involving misappropriation, failure to promptly pay funds at client's request

[15]The retainer agreement stated that respondent could only "endorse client's signature to all settlement checks, provided that attorney immediately distributes to client the client's share of the recovery."

and failure to inform client of right to seek independent counsel, plus failure to report sanctions in another client matter were not viewed by this court "as strongly presenting aggravation on account of multiple acts of misconduct . . . ."].)

The hearing judge also found in aggravation that respondent "deliberately undertook an effort to conceal the existence of the $5,000 from Neal and her attorney." (Std. 1.2(b)(iii).) The record supports this finding since respondent did not include any documentation relating to the Kemper payment of $5,000 in the file he released to Neal's successor counsel, and he never mentioned the Kemper check to either Neal or her new attorney despite numerous conversations and correspondence. However, these acts of concealment also form the basis of respondent's culpability for violating section 6106, and therefore we do not assign it any additional weight as aggravation. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595; *In the Matter of Trillo* (Review Dept.1990) 1 Cal. State Bar Ct. Rptr. 59, 69.)

The hearing judge found in aggravation that respondent was culpable of uncharged misconduct under section 6068, subdivision (m) arising from respondent's failure to communicate with Neal when he did not return her calls on numerous occasions after June 15, 1999. She determined there was additional uncharged misconduct as a result of an act involving moral turpitude when respondent subpoenaed Buchanan and used the State Bar as the return address on the envelope. The hearing judge found that this was an attempt to mislead Buchanan into believing that the State Bar Court issued the subpoena. We do not find clear and convincing evidence to support these determinations. Although Neal testified that she called respondent about twenty times to get an update on her case in September or October 1999, it does not appear that respondent failed to respond eventually. In fact, Neal testified that she was able to speak with respondent and even scheduled a meeting with him. Although respondent ultimately did not attend the scheduled meeting, the following day he explained to Neal the reason for his absence. We also do not find clear and convincing evidence that respondent intended to mislead Buchanan about the subpoena since we believe respondent's explanation is plausible that he used the State

Bar as the return address on the subpoena envelope because he did not want Buchanan to contact him after she received the subpoena.

However, we conclude that the record supports a finding of uncharged misconduct in aggravation not found by the hearing judge in that respondent did not provide an accounting to Neal after he withdrew from employment (rule 4-100(B)(3))[16] and because he threatened to report Buchanan to the State Bar if she did not pay him the attorney fee he believed he was owed (rule 5-100(A)).[17] (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 36 [while evidence of uncharged misconduct may not be used as an independent ground of discipline, it may be considered in aggravation where the evidence is elicited for a relevant purpose and where the determination of uncharged misconduct is based on the attorney's own evidence].)

We adopt the hearing judge's finding in aggravation that respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Throughout these proceedings, respondent expressed disdain for the disciplinary process, and post-trial, he mockingly described the attribute of atonement as ". . . a religious ritual Jews engage in . . ." and declared that he "refuses to convert to keep his Bar card."

Finally, we agree with the hearing judge's finding that respondent's repeated acts of disrespect towards the State Bar Court and the disciplinary process harmed the administration of justice. (Std. 1.2(b)(iv).) Respondent's invectives against the prosecutor, the hearing judge and the State Bar in his pleadings and correspondence, as described in footnote 9 *ante*, were not merely the offhand comments of a disgruntled attorney, but were, as respondent's counsel

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[16]Rule 4-100(B)(3) requires a member to render appropriate accounts to the client regarding all funds of the client coming into possession of the member.

[17]Rule 5-100(A) prohibits a member from threatening "to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute."

properly characterized them, "unfortunate."[18] Given the nature and extent of respondent's inappropriate conduct, we observe that the prosecutor and the hearing judge "performed creditably under extremely trying circumstances." (*Lebbos v. State Bar* (1991) 53 Cal.3d at 37, 49.) Although he asserts there are mitigating circumstances that would explain his behavior (which we address below), there is an acknowledgment in his brief that the claimed mitigation "does not excuse his behavior."

2. Mitigation

We adopt all but one of the hearing judge's findings concerning mitigation and we also find an additional mitigating circumstance. We afford no mitigation to respondent's emotional difficulties and anger stemming from his "troublesome family situation." Respondent was engaged in a protracted and heated child custody battle which resulted in an arrest and criminal charges against him. Respondent testified at length in the hearing below about his perception that he was persecuted by the judiciary and law enforcement in Marin County.[19] Nevertheless, as the State Bar correctly points out, there is no clear and convincing evidence that respondent's emotional difficulties caused him to commit the alleged misconduct.[20] Further, respondent

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[18]Respondent's counsel also described respondent's disrespectful harangues as "unique" but unfortunately this is not necessarily true. (See e.g., *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 42, fn. 5.)

[19]Respondent characterized the family law department of the Superior Court of Marin County as a racketeer-influenced, criminal organization and admitted that he was suing practically all the judges in that county. He also claimed that law enforcement in Marin County harassed him, intimidated him and treated him like a criminal. According to respondent, the "[j]udges conspired with the sheriffs there, and the district attorney charged me solely in retaliation for my complaining about the conduct there." For multiple days during trial in his disciplinary matter, respondent displayed behind his chair in court a blown-up picture of someone respondent described as a deputy in Marin County who used a dog to prevent him from going into court by driving him out of the courtroom into an elevator.

[20]With respect to his battle with his ex-wife over custody of the children and how it affected his conduct in the Neal matter, respondent testified ". . . I don't think it affected my

presented no evidence, expert or otherwise, that he no longer suffers from his emotional problems. (Std. 1.2(e)(iv).)

We agree with the hearing judge that respondent's payment of $5,000 prior to the filing of a State Bar complaint in January 2001 is entitled to significant consideration as a mitigating factor. (*Lawhorn v. State Bar, supra*, 43 Cal.3d at p. 1366.)

Respondent testified that he performed "a couple hundred hours" of pro bono work related to family law in 1997 and represented four clients pro bono in 1999. Although respondent's sporadic pro bono work deserves consideration as a mitigating factor (see *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647-648), on this record, we find it neither compelling nor worthy of significant weight. (See, e.g., *Gadda v. State Bar* (1990) 50 Cal.3d 344, 356 [attorney's four years of pro bono work resulting in several letters and certificates of commendation demonstrated a zeal in pro bono work deserving of mitigating weight].)

The hearing judge did not acknowledge as mitigation respondent's cooperation with the State Bar by entering into a factual stipulation covering background facts in the matter after trial commenced. Although the stipulated facts were not difficult to prove and did not admit culpability, they were, nevertheless, relevant and assisted the State Bar's prosecution of the case. Thus, we give respondent's factual stipulation modest mitigative weight under standard 1.2(e)(v). (See *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 567 [attorney afforded mitigation for entering belated stipulations which mostly concerned easily provable facts].)

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ability to practice or anything, other than that I had to take time out to find out what was going on with the children . . . ."

B. Level of Discipline

The hearing judge recommended that respondent be actually suspended from the practice of law for eighteen months. Respondent seeks dismissal of all charges and therefore no imposition of discipline.[21] The State Bar maintains that "the presumptive level of discipline for misappropriation is disbarment," citing standard 2.2(a) as the basis for its contention.[22] We also consider standard 2.3,[23] although we agree with the State Bar that standard 2.2(a) is the most appropriate because it proposes the most severe of the sanctions. (Std. 1.6(a).)

In determining the appropriate level of discipline, we afford great weight to the standards (*In re Silverton* (2005) 36 Cal.4th 81, 92), but we do not believe standard 2.2(a) establishes a presumption in favor of disbarment as asserted by the State Bar. In fact, the standards are considered by the Supreme Court as "simply guidelines." (*Greenbaum v. State Bar* (1987) 43 Cal.3d 543, 550; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Indeed, in many misappropriation cases that post-date the implementation of the standards, the court has imposed discipline less severe than disbarment. (E.g., *Boehme v. State Bar* (1988) 47 Cal.3d 448, 451-452, 454.)

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[21]In his Notice of Errata, respondent asserts that "if culpability is found, the level of discipline should be less than 18 months actual suspension with appropriate conditions of probation."

[22]Standard 2.2(a) provides for disbarment unless "the amount of the funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate . . . . In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances."

[23]Standard 2.3 provides: "Culpability of a member of an act of moral turpitude . . . or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

We look to prior discipline decisions for additional guidance, giving consideration to those misappropriation cases based on similar facts. The Supreme Court has stated that the "'usual'" discipline for willful misappropriation is disbarment (*Edwards v. State Bar, supra,* 52 Cal.3d at p. 37; *Howard v. State Bar, supra,* 51 Cal.3d at p. 221), although it has qualified this statement on several occasions with the observation that "'only the most serious instances of repeated misconduct and multiple instances of misappropriation have warranted actual suspension, much less disbarment. [Citations.] A year of actual suspension, if not less, has been more commonly the discipline imposed in our published decisions involving but a single instance of misappropriation.'" (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 628, citing *Lawhorn v. State Bar, supra,* 43 Cal.3d 1357, 1367-68 and numerous other cases at p. 628, fn. 4.)

Respondent misappropriated $2,716.61 ($5,000 minus his fee of $3,333.33 minus the CTA balance of $616.72). We consider this as a significant sum (*Lawhorn v. State Bar, supra,* 43 Cal.3d at pp. 1367-1368 [misappropriation of $1,355.75 considered significant]), but a single misappropriation of this amount has not necessarily resulted in disbarment, even when, as here, the misappropriation involved deceit and/or other acts of moral turpitude. (*McKnight v. State Bar, supra,* 53 Cal.3d 1025,1029, 1032; *Edwards v. State Bar, supra,* 52 Cal.3d 28; *Boehme v. State Bar, supra*, 47 Cal.3d 448; *Lawhorn v. State Bar, supra,* 43 Cal.3d 1357.) We further observe that respondent's misappropriation was accompanied by acts of deceit, and, perhaps most significantly, respondent has shown a lack of remorse and disrespect of the disciplinary process. However, at the time of the misconduct, respondent had practiced law for nine years with no prior history of discipline and there is no evidence of subsequent misconduct. Based on these factors, we consider the cases set forth below as most pertinent, noting that the range of discipline is from one year to two years' actual suspension.

Boehme v. State Bar, supra, 47 Cal.3d 448, is a case with strikingly similar facts, involving an attorney who misappropriated a client's personal injury settlement in the amount of $2,495.13. The misappropriation was not only wilful, but it involved moral turpitude and

dishonesty. (*Id*. at pp. 451-452.) Like respondent in the instant case, Boehme's explanation for his non-payment of the settlement was at best far-fetched, consisting of a purported payment to a bookmaker on his client's behalf. (*Id*. at. p. 452.) Moreover, as with the instant case, Boehme failed to appreciate the seriousness of his wrongdoing or demonstrate any repentance, and he presented only two character witnesses. (*Id*. at p. 452.). Boehme offered as evidence a "life-threatening" medical condition, but this condition arose after the misappropriation, and therefore was only considered in the context of his ability to repay the client and not as mitigation for the misappropriation. (*Id*. at p. 451.) Additional serious aggravating factors present in the *Boehme* case, but not present in the instant case, included his lack of candor to the court and his failure to make any restitution. (*Id*. at p. 452.) Nevertheless, the Supreme Court declined to apply standard 2.2 and rejected our recommendation of disbarment, concluding it was "too harsh" because there was but a single instance of misappropriation and no prior misconduct in twenty-two years of practice. (*Id*. at p. 454.) Instead, the court concluded that a five-year stayed suspension, five years' probation and an 18-month actual suspension was sufficient. (*Id.* at p. 450.)

In *Lawhorn v. State Bar, supra,* 43 Cal.3d 1357, another case with very similar facts, the Supreme Court again rejected our recommendation of disbarment, finding it to be "excessive discipline" (*id*. at p. 1360), and instead imposed two years' actual suspension. Lawhorn intentionally misappropriated $1,355.75 of his client's personal injury settlement and misrepresented to his client that his trust account had been frozen by his ex-wife. Lawhorn's client tried on 28 occasions to reach him about payment and finally advised him in a message that she intended to refer the matter to the State Bar. At that point, Lawhorn paid the client in full, including interest, which the Supreme Court accorded mitigative weight because the repayment occurred before Lawhorn learned of the actual filing of the State Bar complaint. (*Id*. at p. 1366.) While acknowledging that disbarment was suggested by the standards (*id*. at p. 1366), the court stressed that the matter involved a single instance of misappropriation (*id.* at p.

1367), and therefore the court had grave doubts about the applicability of the standards. (*Id*. at p. 1366.) Unlike the instant case, where respondent has nine years of practice with no prior discipline, Lawhorn had only four years of discipline-free practice.

McKnight v. State Bar, supra, 53 Cal.3d 1025, is another case with similar misconduct where an attorney with no prior disciplinary history engaged in acts of moral turpitude arising from the misappropriation of client trust funds and additional misconduct involving the failure to deposit funds into a trust account, failure to promptly notify a client of receipt of funds, and failure to promptly deliver client funds. However, the amount of funds misappropriated in *McKnight* was in excess of $17,000, and, in addition, the attorney improperly entered into a business transaction with his client. The attorney repaid only half of the funds (and then only after the client had filed a complaint with the State Bar). In mitigation, the court gave weight to several attorneys who testified on the attorney's behalf, but gave only minimal weight to medical testimony that he was manic-depressive because there was no causal connection established between his mental illness and the misappropriations. (*Id*. at p. 1038.) In spite of the large amount of funds misappropriated and a finding that the attorney lacked remorse and appreciation of the seriousness of his wrongdoing (*id.* at pp. 1036-37), the Supreme Court did not adopt the disbarment recommendation of standard 2.2(a). Instead, the court ordered the attorney to be actually suspended for one year because it considered the attorney's 10 years of practice without discipline as evidence the misconduct was "isolated and aberrational." (*Id*. at p. 1037.) This court also has been unwilling to mechanically apply standard 2.2(a) in misappropriation cases where we felt the facts did not warrant such a severe discipline as disbarment. The case of *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364 involved a far larger misappropriation over a longer period of time than that which occurred here. In the *McCarthy* case, an attorney, acting as a general partner, refused over a period of several years to distribute more than $20,000 of partnership funds to a limited partner and instead used these funds for his own purposes. (*Id*. at p. 374.) We found this conduct constituted willful misappropriation

involving moral turpitude. (*Id*. at p. 368.) We further found the attorney concealed the funds from his partner (*id.* at p. 381), and sought to have his partner withdraw his State Bar complaint. (*Id*. at p. 368.) In aggravation, we found the attorney's conduct was surrounded by concealment and harmed his client, the attorney failed to make any restitution, and he demonstrated indifference and a lack of remorse. (*Id*. at pp. 383, 385.) We did not consider as an extraordinary demonstration of good character the testimony of two associates and the attorney's wife. However, we did not adopt the disbarment specified by standard 2.2(a) even though the amount involved was significant and mitigating circumstances did not clearly predominate. (*Id*. at p. 384.) Instead, we recommended a four-year stayed suspension, three years of probation with a two-year actual suspension because "all of the misconduct found resulted from a single failure to distribute funds." (*Id*. at p. 385.) In view of the attorney's 40 years' of practice with no prior record of discipline, the misconduct appeared to be "aberrational." (*Ibid*.)

In *In the Matter of Davis, supra,* 4 Cal. State Bar Ct. Rptr. 576, Davis became embroiled in an intra-corporate dispute and ultimately misappropriated over $79,000 of settlement proceeds belonging to the corporation. Davis also failed to account to the board of directors in spite of repeated demands for an accounting. The misconduct was aggravated by significant client harm, overreaching, indifference toward atonement and uncharged misconduct due to multiple conflicts of interest. (*Id*. at p. 592.) We were particularly troubled by Davis' failure to make any restitution to his client, as well as his "various acts of concealment and duplicity. . . ." (*Id*. at p. 596.) Even though we found that Davis' misconduct was "on the more serious end of the [disciplinary] continuum" (*id*. at p. 595) and the substantial mitigation evidence was outweighed by even more serious evidence in aggravation (*id*. at p. 596), we did not adopt disbarment as specified by standard 2.2(a). (*Id*. at p. 596.) Instead, we recommended a four-year stayed suspension, four years of probation with a two-year actual suspension because the misconduct was directed towards a single client and Davis had twelve years of practice with no history of discipline. (*Id*. at p. 596.) We were also impressed with the strength of the testimony of his

character witnesses and his extensive community service as well as the fact that there was no evidence of additional misconduct after the misappropriation that had occurred more that five years previously. (*Id.* at p. 596; see also *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456 [two-year actual suspension for attorney who disbursed without authorization $15,000 held in trust for client and client's ex-spouse, keeping $5,000 as his own fees, with protracted deceit as to whereabouts of the funds, but mitigation evidence from six character witnesses (including three judges) and evidence of substantial community service]; *In re Trillo, supra*, 1 Cal. State Bar Ct. Rptr 59 [one-year actual suspension for attorney who converted $2,500 in advanced fees and costs without performing services and deceived his clients, aggravated by significant harm to clients, failure to cooperate or to pay restitution, and non-participation in the proceedings, but no prior history of discipline in fourteen years of practice].)

The State Bar cites to *Chang v. State Bar* (1989) 49 Cal.3d 114 in support of its recommendation of disbarment. *Chang* has some similarities to the instant case in that it concerned an attorney with no prior record of discipline who, in one instance, intentionally misappropriated over $7,000 from his trust account for his own purposes and then concealed this fact for several months. But we find *Chang* is not as persuasive as the other discipline cases cited above because the Supreme Court, in ordering Chang's disbarment, focused on his refusal to repay the misappropriated money in spite of repeated demands to do so, and his additional acts of moral turpitude arising out of his lies to the State Bar investigator, which fraudulently delayed the investigation and his "contrived misrepresentations" before the hearing panel, which also hindered its fact-finding function. (*Id*. at p. 128.) These factors, together with his failure to acknowledge the impropriety of his misconduct were offered by the court as "reasons to doubt whether he will conform his future conduct to the professional standards demanded of California attorneys." (*Id*. at p. 129.) In contrast, respondent, repaid the money as soon as Buchanan demanded it and before any complaint was made to the State Bar. Further, although the hearing

judge made several credibility determinations adverse to respondent, she did not find he lacked candor.

In support of its disbarment recommendation the State Bar also cites to *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. We find this case to be inapposite. *Varakin* is not a misappropriation case but rather a situation where an attorney over a dozen years abused the judicial system by pursuing "a relentless pattern of filing motions and appeals which were manifestly frivolous . . . ." (*In the Matter of Varakin, supra,* 3 Cal. State Bar Ct. Rptr. at p. 190.) He continued this harassment in spite of many substantial sanctions. (*Ibid*.) We concluded that although we held out little hope of preventing Varakin from continuing to abuse the legal system, at the very least disbarment would "prevent him from continuing his abusive course of conduct under the cloak of authority conferred on him by his membership in the bar." (*Id*. at. p. 191.)

Ultimately, each case must be decided on its own facts. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059.) This would be a prototypical misappropriation case but for respondent's unwillingness or inability to appreciate the impropriety of his conduct and his manifest disrespect for the State Bar, the State Bar Court and the hearing judge. Tempering these serious concerns is the fact that respondent's misconduct was directed toward one client and constitutes a single instance of misappropriation of $2,716.61, and respondent has no prior record of discipline. Moreover, his misconduct occurred more than five years ago without any evidence of additional misconduct since that time, which may be considered as a factor in deciding the appropriate discipline. (*Chefsky v. State Bar, supra*, 36 Cal.3d 116, 132; *In the Matter of Davis, supra,* 4 Cal. State Bar Ct. Rptr. at p. 596.) We also note respondent's willingness to enter into a partial stipulation of facts, as well as his payment of restitution before a complaint was filed with the State Bar. After a balanced consideration of all relevant factors, including the standards and other disciplinary cases, we conclude that respondent's misconduct warrants two years' actual

suspension, which is less severe than the disbarment suggested by the State Bar but more serious than that recommended by the hearing judge.

The State Bar asserts in its brief on appeal that its "main concern with the Hearing Department's recommendation is that respondent would be allowed to resume practice without establishing rehabilitation. . . ." Given respondent's refusal to accept responsibility for his wrongdoing and his lack of remorse and respect for these disciplinary proceedings, we agree. In order to protect the public, preserve confidence in the legal profession and maintain the professional standards for attorneys (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.3), we further recommend that respondent's actual suspension be coupled with the condition that it remain in place until he establishes his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii).[24]

IV. RECOMMENDATION

We recommend that respondent FRANCIS T. FAHY be suspended from the practice of law in the State of California for a period of three years; that execution of the three-year period of

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[24]At oral argument, and subsequently by order dated October 24, 2006, we asked for additional briefing by the parties as to whether or not a basis exists for a referral of respondent to the Hearing Department for a probable cause determination for involuntary inactive enrollment pursuant to section 6007, subdivision (b)(3) as the result of respondent's disrespectful conduct towards the hearing judge and the prosecutor. (See *Newton v. State Bar* (1983) 33 Cal.3d 480.) The State Bar filed its Memorandum on November 7, 2006. In its memorandum, the State Bar asserted that while respondent "demonstrated a contemptuous and obstreperous attitude" and is "a very troubled and angry person," there is no evidence that he possesses a disabling mental illness, citing *Lebbos v. State Bar, supra,* 53 Cal.3d 37, *Weber v. State Bar* (1988) 47 Cal.3d 492, and *Alberton v. State Bar* (1984) 37 Cal.3d 1, as cases involving similar examples of contemptuous behavior which did not result in a referral for a determination of mental infirmity or illness. The State Bar also points out that the hearing judge, who saw and heard respondent throughout these proceedings, did not indicate a concern for respondent's mental state or competency. Respondent filed a responsive memorandum on January 25, 2007, disputing the State Bar's characterization of him as contemptuous and abusive. Upon giving this matter our consideration, and having reviewed the record de novo, we determine there is not substantial evidence indicating that a referral pursuant to section 6007, subdivision (b)(3) is warranted.

suspension be stayed; and that he be placed on probation for a period of three years on the following conditions:

1. That respondent be actually suspended from the practice of law in the State of California during the first twenty-four months of probation and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation. Respondent must maintain, with the State Bar's Membership Records Office *and* 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).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, his current home address and telephone number. (See Bus. & Prof. Code, 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

3. Respondent must report, in writing, to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation (reporting dates). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

   (a) in the first report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

   (b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

   (c) if respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from respondent and a certified public accountant or other financial professional approved by the Office of Probation, certifying that respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or Client's Funds Account," and that respondent has kept and maintained the following:

i. a written ledger for each client on whose behalf funds are held that sets forth the name of such client; the date, amount and source of all funds received on behalf of such client; the date amount, payee and purpose of each disbursement made on behalf of such client; and the current balance for such client;

ii. a written journal for each client trust fund account that sets forth the name of such account; the date, amount, and client affected by each debit and credit; and the current balance in such account;

iii. all bank statements and canceled checks for each client trust account; and

iv. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies each item of security and property held; the person on whose behalf the security or property is held; the date of receipt of the security or property; the date of distribution of the security or property; and the person to whom the security or property was distributed.

(d) If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.

(e) The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct.

During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

4. Within 30 calendar days from the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss probation conditions. At 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 meet promptly with the probation deputy as directed and upon request.

5. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.

6. Within one year after the effective date of the Supreme Court order in this matter, respondent must attend and satisfactorily complete the State Bar's Ethics School and Client Trust Accounting School and provide satisfactory proof of such completion to the

State Bar's Office of Probation in Los Angeles. This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing these courses. (Accord, Rules Proc. of State Bar, rule 3201.)

7. Within one year of the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of no fewer than two hours of MCLE-approved courses in anger management. Respondent must obtain approval from the Office of Probation prior to enrolling in any such course. This condition of probation is separate and apart from respondent's MCLE requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing these courses. (Accord, Rules Proc. of State Bar, rule 3201.)

8. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the end of the probationary term, if respondent has complied with the conditions of probation, the Supreme Court order suspending respondent from the practice of law for three years will be satisfied, and the suspension will be terminated.

V. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

VI. RULE 9.20

We further recommend that respondent be ordered to comply with rule 9.20 of the California Rules of Court and to perform the acts specified in paragraphs (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.

VII. COSTS

We further recommend that the costs incurred by the State Bar in this matter be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable as provided in Business and Professions Code section 6140.7 and as a money judgment.

EPSTEIN, J.

We concur:

WATAI, Acting P. J.

STOVITZ, J.*

*Retired Presiding Judge of the State Bar Court, serving by designation of the Presiding Judge