

**FILED**

OCT 25 2002

STATE BAR COURT  
CLERKS OFFICE  
LOS ANGELES

**THE STATE BAR COURT  
HEARING DEPARTMENT - LOS ANGELES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

In the Matter of	)	Case No. 01-PM-05116-PAB
<b>SYDNEY JACK GORDON,</b>	)	<b>DECISION</b>
<b>Member No. 47916,</b>	)	
<u>A Member of the State Bar.</u>	)	

**1. INTRODUCTION.**

Respondent Sydney Jack Gordon ("Respondent") failed to comply with some of the terms of his probation that had been imposed because of a prior discipline. As a result of this misconduct, it is recommended, *inter alia*, that his probation in Supreme Court matter S059794 (State Bar Court Case Nos. 91-O-7793, et al.) be revoked, that the previous stay of execution of the suspension in Supreme Court matter S059794 (State Bar Court Case Nos. 91-O-7793, et al.) be lifted, and that Respondent be suspended from the practice of law for three years; that execution of said suspension be stayed; and that Respondent be placed on probation for a period of five years, subject to conditions of probation including, *inter alia*, that he be actually suspended from the practice of law for two years 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), Rules of Procedure of the State Bar of California, Title IV, Standards for Attorney Sanctions for Professional Misconduct.

**2. PERTINENT PROCEDURAL HISTORY.**

In Supreme Court order SO59794, filed May 30, 1997, Respondent was disciplined and ordered, *inter alia*, to comply with certain conditions of probation.

1 On February 11, 2002, the Office of the Chief Trial Counsel ("OCTC") filed a motion to  
2 revoke Respondent's probation, specifically as a result of Respondent's alleged failure to submit  
3 satisfactory restitution for July 10 and October 10, 1999; January 10, April 10, July 10 and October  
4 10, 2000; January 10, April 10, July 10 and October 10, 2001; and January 10, 2002.

5 Respondent's response was filed March 22, 2002.

6 OCTC was represented in this matter by Deputy Trial Counsel Jayne Kim, Esq. The  
7 Respondent was represented by Erica Tabachnick, Esq.

8 A hearing was held on July 12, 2002. Respondent testified and presented five character  
9 witnesses.

10 This matter was originally submitted for decision on July 26, 2002. However, on September  
11 11, 2002, the Court held a further status conference with the parties. At that time, on the Court's  
12 own motion and without objection from the parties, the July 26, 2002, submission date was vacated,  
13 and the parties were ordered to meet and confer on several issues.

14 On September 25, 2002, the Court held a further status conference with the parties.

15 This matter was taken under submission for decision on October 11, 2002.

16 **3. FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

17 The Court's findings of fact and conclusions of law are based on the factual allegations  
18 contained in the motion to revoke probation and supporting documents, the parties' joint stipulation  
19 re: undisputed facts and the evidence presented by Respondent<sup>1</sup>; and the evidence presented at the  
20 hearing.

21 Respondent was admitted to the practice of law in California on January 7, 1971, was a  
22 member at all times pertinent to these charges, and is currently a member of the State Bar of  
23 California.

24 On or about December 18, 1996, Respondent, who was represented by Counsel, Erica A.  
25 Tabachnick ("Tabachnick"), entered into a Stipulation as to Facts and Disposition with the State Bar  
26 in State Bar Court Case Nos. 91-O-7793; 91-O-7835; 92-O-13056; 92-O-19395; 93-O-12129; 93-O-

27  
28  

---

<sup>1</sup>The parties have stipulated to, and the Court has deemed admitted, certain facts as  
undisputed. (Rule 131, Rules of Procedure, State Bar of California.)

1 12138; 93-O-13131; 93-O-14327; 93-O-14875; 93-O-15705; 93-O-19134; 93-O-19939; 96-O-7079  
2 (“Stipulation”).

3 On May 30, 1997, the California Supreme Court filed an Order in Case No. S059794 (State  
4 Bar Court Case Nos. 91-O-7793; 91-O-7835; 92-O-13056; 92-O-19395; 93-O-12129; 93-O-12138;  
5 93-O-13131; 93-O-14327; 93-O-14875; 93-O-15705; 93-O-19134; 93-O-19939; and 96-O-7079  
6 (Cons.) that Respondent be suspended from the practice of law for a period of five (5) years and until  
7 he shows proof satisfactory to the State Bar Court of his present fitness to practice and present  
8 learning and ability in the law pursuant to Standard 1.4(c)(ii), Standards for Attorney Sanctions for  
9 Professional Misconduct,<sup>2</sup> that execution of suspension be stayed, and that Respondent be placed on  
10 probation for a period of seven (7) years subject to the conditions of probation, including actual  
11 suspension of eighteen (18) months, as recommended by the Hearing Department of the State Bar  
12 Court in its order regarding the Stipulation filed on December 20, 1996, as modified on January 15,  
13 1997. It was ordered that Respondent take and pass the Multistate Professional Responsibility  
14 Examination within one year after the effective date of the Order and to file quarterly reports no later  
15 than January 10, April 10, July 10 and October 10 of each year of probation. Respondent was  
16 ordered to file a certificate from a Certified Public Accountant (CPA report”) or Public Accountant  
17 with each quarterly report if he was in possession of clients’ funds or had come in possession of  
18 such funds during the period covered by each quarterly report.<sup>3</sup>

19 Pursuant to the aforementioned May 30, 1997, California Supreme Court Order, Respondent  
20 was ordered to start making restitution payments within two (2) years of the effective date of the  
21 Order, as follows:

22 \_\_\_\_\_  
23 <sup>2</sup>Although the parties’ Joint Stipulation Re: Undisputed Facts filed July 12, 2002, refers  
24 to “Standard 1.4(c)(ii), Standards for Professional Misconduct,” the full title of the standards is  
25 “Standards for Attorney Sanctions for Professional Misconduct.”

26 <sup>3</sup>Although the parties’ Joint Stipulation Re: Undisputed Facts filed July 12, 2002, states,  
27 “Respondent was ordered to file a certificate from a certified public account [sic] (“CPA report”) with each quarterly report,” an actual review of the Stipulation reveals that the language of the  
28 Stipulation states, “... if respondent is in possession of clients’ funds, or has come into possession thereof during the period covered by each quarterly report, respondent shall file with each report required by these conditions of probation a certificate from a Certified Public Accountant or Public Accountant . . . .”

- 1 a) Guillermo Chuquimia, in the amount of \$2,275.00 (property damage),
- 2 \$1,723.00 (bodily injury);
- 3 b) Ruth Chuquimia, in the amount of \$1,911.00;
- 4 c) Teresa Ustarez, in the amount of \$1,911.00;
- 5 d) Pedro Silva, in the amount of \$1,959.00;
- 6 e) Milagro Silva, in the amount of \$1,959.00;
- 7 f) Carlos A. Martinez, in the amount of \$1,500.00;
- 8 g) Elia Molina, in the amount of \$7,500.00;
- 9 h) Jose Briseno, in the amount of \$8,000.00;
- 10 i) Antonio Tello, in the amount of \$3,600.00;
- 11 j) Jose Tello, in the amount of \$3,600.00 (bodily injury), \$1,402.00 (for
- 12 property damage);
- 13 k) Alfredo Gonzales Mejia, in the amount of \$4,000.00;
- 14 l) Ricardo Turcios, in the amount of \$5,775.00;
- 15 m) Rita Turcios, in the amount of \$5,950.00;
- 16 n) Carlos G. Lopez, in the amount of \$5,675.00;
- 17 o) Mario A. Jaimes, in the amount of \$5,000.00;
- 18 p) Jorge Molina, in the amount of \$1,029.00; or the Client Security Fund, if
- 19 appropriate<sup>4</sup>, and furnish satisfactory proof to the Probation Unit.

20 The May 30, 1997, California Supreme Court Order became effective on June 29, 1997.  
21 Respondent received notice of the Supreme Court Order.

---

22  
23 <sup>4</sup>According to the parties' Stipulation in Case Nos. 91-O-7793, et al., "[w]ithin seven (7)  
24 years of the effective date of the Order approving [the] stipulation, respondent must make  
25 restitution to [those] individuals . . . , or to the Client Security Fund if it has paid. The Office of  
26 Trial Counsel shall provide respondent with the last known addresses and telephone numbers of  
27 each individual [to whom restitution is due]. Respondent shall pay a total amount of \$64,770 . . .  
28 in quarterly installments of \$3,238.50 until paid in full. Quarterly restitution payments shall  
commence within two (2) years of the effective date of the Order approving [the] stipulation.  
Respondent must furnish satisfactory evidence of such restitution to the Probation Unit, Office of  
the Chief Trial Counsel in Los Angeles. Respondent shall include in each quarterly report  
required herein satisfactory evidence of all restitution payments made by him during the  
reporting period."

1 On July 11, 1997, Probation Deputy Lydia G. Dineros ("Dineros") of the Probation Unit  
2 wrote Tabachnick a letter regarding Respondent's conditions of probation. Dineros also enclosed  
3 several attachments, including a copy of the Supreme Court order, all of the conditions of probation  
4 except the restitution requirement, Notice of Counsel Representation, and a quarterly report form  
5 and instruction sheet. Dineros' letter did not mention Respondent's restitution requirement.  
6 Tabachnick received Dineros' letter.

7 On July 23, 1997, Dineros wrote Respondent a letter regarding Respondent's conditions of  
8 probation. Dineros also enclosed several attachments, including a copy of the Supreme Court order,  
9 all the conditions of probation except the restitution requirement, Notice of Counsel Representation,  
10 and a quarterly report form and instruction sheet. Dineros' letter did not mention Respondent's  
11 restitution requirement. Respondent received Dineros' letter.

12 On August 22, 2001, Dineros<sup>5</sup> wrote a letter to Tabachnick, informing her that the Probation  
13 Unit had not received from Respondent any proof of restitution payments for the quarters which  
14 commenced from July 10, 1999 through July 10, 2001, and advised the Respondent to submit such  
15 proof forthwith.

16 On October 22, 2001, the Probation Unit received from Respondent a copy of a cancelled  
17 cashier's check no. 3012266023 drawn from California Federal Bank and payable to the Client  
18 Security Fund in the amount of \$500.00, dated October 17, 2001.

19 Respondent failed to file the CPA report due January 10, 2002.

20 On February 11, 2002,<sup>6</sup> the State Bar of California, Office of Chief Trial Counsel, filed a  
21 Notice of Motion and Motion to Revoke Probation due to Respondent's failure to pay restitution and  
22

23  
24  
25 <sup>5</sup>Although the parties' Joint Stipulation Re: Undisputed Facts filed July 12, 2002, states,  
26 "On August 22, 2001, Dineros Unit [sic] wrote a letter to Tabachnick . . .," a review of Exhibit  
27 4e which is attached to OCTC's motion to revoke Respondent's probation, indicates that the  
28 August 22, 2001, letter was written from Probation Deputy Dineros to Tabachnick.

<sup>6</sup>Although the parties' Joint Stipulation Re: Undisputed Facts filed July 12, 2002, alleges,  
"On or about February 14, 2002, the . . . Office of Chief Trial Counsel . . . filed a Notice of  
Motion and Motion to Revoke Probation . . .," the motion was actually filed on February 11,  
2002.

1 file his CPA quarterly report.<sup>7</sup>

2 Respondent failed to file the CPA report due on April 10, 2002.

3 On May 14, 2002, Respondent made a restitution payment to the Client Security Fund  
4 (“CSF”) in the amount of \$2,000.00.

5 On June 17, 2002, Respondent made a restitution payment to CSF in the amount of  
6 \$2,000.00.

7 On June 21, 2002, Respondent filed a report from his public accountant attesting to  
8 Respondent’s compliance for the probation period from September 11, 2001, through May 10, 2002.

9 **Findings of Fact Based on Testimony of Sydney Jack Gordon.**

10 Respondent is seventy-one years old. He graduated from New York Law School in 1959.  
11 He came to California in 1961 and worked in a family business until 1971.

12 Between 1971-1975, Respondent was employed in a law partnership practicing workers’  
13 compensation, personal injury, family and general law. Between 1975 -1986, Respondent was a sole  
14 practitioner, practicing in the area of workers’ compensation. Between 1987-1989, Respondent  
15 worked for a group of medical doctors doing consultation in the areas of personal injury and  
16 workers’ compensation. Between 1989-1990, Respondent was a sole practitioner in the areas of  
17 personal injury and workers’ compensation.

18 In 1991, Respondent had his second heart bypass surgery and did not work for approximately  
19 six months.

20 Between 1991- 1992, Respondent was employed by the Civic Law Center (“Center”) which  
21 had offices in Los Angeles and Santa Ana. Respondent opened an office in Van Nuys for the  
22 Center. Additionally, Respondent operated a law office in downtown Los Angeles, as well as a  
23 home office.

24 Between 1995-1996, Respondent worked for Masery & Vittito for approximately six months.

25 The client complaints which were the basis of the underlying disciplinary action arose  
26 primarily out of the Respondent’s downtown law office and his work at the Center. Four of the  
27

28  

---

<sup>7</sup>The Court notes, however, that OCTC’s motion to revoke Respondent’s probation was not based on an allegation that Respondent failed to file required CPA reports.

1 client matters involved misconduct arising out of client matters from his home office. Prior to  
2 Respondent's association with the Center, he had no discipline matters.

3 Respondent testified that in the underlying disciplinary matter, he was found culpable in  
4 thirteen matters for not spending enough time supervising his law staff, not spending enough time  
5 reviewing cases and failing to adequately monitor his client trust accounts.

6 Respondent states his staff misappropriated attorney's fees and office funds. Respondent  
7 states he has never received or recovered any of the money that had been misappropriated by his  
8 office staff. Respondent made a claim to Security Pacific Bank but he has never recovered the  
9 funds.

10 As a result of his misconduct, Respondent entered into a stipulation as to facts and  
11 disposition on December 20, 1996. (Exhibit 4.) Respondent testified that he understood all the  
12 terms and conditions of the stipulation, including the provisions regarding restitution in the sum of  
13 approximately \$69,000 and costs in the amount of approximately \$7,000. Respondent was actually  
14 suspended between June 30, 1997-December 30, 1998. On or about April 1997, Respondent notified  
15 all of his clients regarding his discipline matters and that he had closed his office.

16 Respondent acknowledged he received correspondence from the State Bar's Probation Unit  
17 but claims that nothing was communicated to him about his restitution obligations. However,  
18 Respondent testified he was aware-- as per the December 20, 1996, stipulation-- that he was required  
19 to pay restitution. He also admits that no one ever told him he did not have to pay the restitution as  
20 set forth in the stipulation. He admits he received letters from the Probation Unit and he knew he  
21 had to pay the restitution.

22 Respondent has filed his quarterly reports with the Probation Unit and acknowledges that on  
23 a few occasions he filed them late. When he filed his quarterly reports he utilized the form provided  
24 by the Probation Unit; he states that the form did not reference restitution. Respondent testified he  
25 thought he had to pay the restitution within seven years as per the seven year probation term of the  
26 stipulation.

27 Respondent's actual suspension ended on December 30, 1998, but he did not begin practicing  
28 law because he had to pay the costs associated with the disciplinary matter. Respondent states he  
borrowed money from his brother and ultimately paid the disciplinary costs in August 1999, and

1 became active in October 1999.

2 Because Respondent could not practice law between December 1998 - October 1999, he  
3 states he went into the restaurant business. His first adventure was with Le Bon Café, a coffee cart  
4 manufacturer. He worked in the Le Bon Café manufacturing plant for nine months, five days a  
5 week, nine hours a day. He states he was never paid for his services and deferred his compensation.  
6 Le Bon Café eventually filed for bankruptcy. Respondent utilized some of his personal savings for  
7 his living expenses during the time he worked for Le Bon Café and lived in an apartment.

8 Between April 1998-July 1999, Respondent invested \$19,000 – his entire personal savings -  
9 into a Love's Restaurant in El Monte. Respondent got involved in the Love's Restaurant because  
10 he knew the individual who owned all of the Love's franchises as well as the corporate offices.  
11 Respondent and two others purchased the El Monte Love's Restaurant for \$145,000. Respondent  
12 did not personally sign any purchase agreement documents. His two partners were former clients.  
13 Respondent did not execute a promissory note with his partners because he states he had a personal  
14 relationship with them dating back to 1995-1996. The Love's Restaurant adventure failed. During  
15 the time the Respondent was involved with the Love's Restaurant, he worked the night shift at the  
16 business. Respondent sued the mother of one of his partners who had invested into the restaurant  
17 for breach of contract. He used money from his social security to pay the court filing fee and  
18 prosecuted the case in pro per. He obtained a stipulated judgment and received \$5,000. He used the  
19 money from the judgment to pay his living expenses.

20 Respondent got involved in another restaurant endeavor called The Main Event in December  
21 1998 or January 1999, for a four to five month period, but testified he was never paid for his  
22 services. He was the manager at The Main Event and worked everyday. He was living with his  
23 friend, Attorney Dennis Roman, during this time because he had been evicted from his apartment.  
24 Respondent testified he did not have any money left after his involvement with The Main Event.  
25 In June or July 1998, he was evicted from his apartment for failure to pay rent. Thereafter, he lived  
26 with a friend for 9-12 months and lived with his cousin for about four months.

27 Other than monthly income from his social security in the amount of \$620, Respondent  
28 testified he earned no income between 1997-1999. He used his personal savings to pay for expenses.  
He originally had approximately \$25,000 in savings.

1 In October 1999, Respondent was admitted to the Veteran Affairs Hospital due to ill health.  
2 Respondent states he tried to find legal employment, contacted seven to eight law firms, but  
3 was unable to get a job; therefore, he decided to go solo in 1999. He states his solo practice has not  
4 been successful.

5 In October 1999, Respondent opened a law office in Glendale and began practicing corporate  
6 and domestic law. He did not want to be in the field of workers' compensation because he believed  
7 it was too stressful, once having a practice with up to five hundred clients.

8 He has had only two clients in his new practice, including a probate case. He believes he will  
9 receive a \$30,000 fee from the probate case and intends to pay half that sum to the State Bar. His  
10 office rent is \$500 a month. His office expenses are approximately \$300-\$360 a week. Respondent  
11 was not charged for the first three months of rent and did not have to pay for a secretary/receptionist  
12 until January 2000. The rent is now \$544; he initially had to borrow money to pay the rent. In the  
13 first three months of his practice, Respondent states he made about \$1,000. He has not paid rent on  
14 his law office since November 2001.

15 Respondent reported \$200,000 in business losses on his 1998 federal income tax returns that  
16 he had carried over from the period of 1994-1996. (Exhibit A.) Respondent testified he made some  
17 investments that went bad including The Main Event and a nightclub in which he lost over \$100,000.  
18 The \$100,000 investment dates back to the period between 1992 through 1995. Additionally,  
19 Respondent states he loaned \$39,000 to several clients in a video business. He can not remember  
20 the other investments that he was involved in that went bad.

21 According to Respondent's 1998 Federal Income Tax Schedule C (Form 1040), he listed  
22 gross income from his law practice at \$38,031. (Exhibit A.) However, Respondent was suspended  
23 from the practice of law during 1997-December 1998 and, therefore, was not practicing law.  
24 Additionally, Respondent testified that he did not earn any income in 1998 while involved in Love's  
25 Restaurant and The Main Event.

26 Respondent testified that in 1998 he owned a vehicle and drove approximately 30,000 miles  
27 that year. His auto insurance was about \$1,500 a year. On his 1998 Federal Income Tax Return he  
28 indicated \$7,171 as a vehicle expense. (Exhibit A.)

Respondent states he borrowed up to \$10,000 between 1997 - 1999 from Jean Sweeney. He

1 states he paid her back \$2,000 after he opened up his law practice, earning that money from his  
2 practice.

3 Respondent's 1998 Federal Income Tax Schedule C indicates \$3,206 in expenses for meals  
4 and entertainment. He testified he does not know how these expenses were incurred or recall these  
5 expenses.

6 Respondent testified he earned \$1,000 in 1999; however, Respondent's 1999 Federal Income  
7 Tax Schedule C (form 1040) indicates \$25,796 as income.

8 In 1999, Respondent states he had an accident with his vehicle but does not recall how he  
9 paid for his auto repair.

10 In 2000, Respondent states he did not gross over \$3,000 a month. However, according to  
11 Respondent's 2000 Federal Income Tax Schedule C (form 1040), his gross receipts or sales were  
12 \$114,440. Respondent does not know where these figures came from and could not explain it.

13 Respondent testified he does not understand his income tax returns and would need to check  
14 with his accountant to be able to explain it. Respondent testified he does not know if the  
15 information on his tax returns is false.

16 Respondent failed to pay restitution and provide proof thereof to the State Bar's Probation  
17 Unit for the quarters ending July 10 and October 10, 1999, January 10, April 10, July 10 and October  
18 10, 2000, January 10, April 10, July 10 and October 10, 2001, and January 10, 2002. Respondent  
19 testified that the first time he got notice from the State Bar that his restitution payments were  
20 overdue was in October, 2001. At that time, he states he only had enough income to pay rent for his  
21 office and a legal secretary.

22 Respondent never filed a motion to modify his probation terms stating he did not have  
23 enough funds from social security to pay for an attorney to file the motion. In November 2001,  
24 Respondent made a \$500 restitution payment.

25 Respondent admits that he did not file three Certified Public Accountant ("CPA") reports in  
26 November and December of 2001, nor the CPA reports between January-May 2002. He states he  
27 did file a June 2002, CPA report. He testified he has had problems with his accountant who is in  
28 Nevada in getting the reports. He believes his accountant owes him several thousand dollars.

Respondent began working part time for the Southern California Medical/Legal Consultants,

1 owned by Ronald Diller. He earns \$300 a day working on a part-time basis. He believes he may  
2 be able to work full-time.

3 Respondent recently made two \$2,000 restitution payments to the State Bar in May and June  
4 of 2002.

5 During 2002, Respondent states that the income from his law practice grossed approximately  
6 \$3,000 per month, all of which goes towards paying his expenses.

7 According to the declaration that the Respondent filed with his opposition to the motion to  
8 revoke probation, dated March 21, 2002, he stated he was in the process of closing his law office.  
9 However, Respondent testified that he has not closed his law office.

10 Respondent states that he owes federal income taxes from 2001.

11 In 1997, Respondent had approximately \$25,000 in which he could have paid the restitution.  
12 In April 1998, he had about \$19,000 in which he could have paid the restitution.

13 Respondent states he wants to make restitution but if he is suspended he would not be able  
14 to do so.

#### 15 **4. CONCLUSIONS OF LAW.**

16 Bad faith is not a requirement for a finding of culpability in a probation violation matter;  
17 “instead, a ‘general purpose or willingness’ to commit an act or permit an omission is sufficient.  
18 (Citations.)” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)  
19 Pursuant to Business and Professions Code section 6093(c) and rule 561 of the Rules of Procedure,  
20 the Court concludes that OCTC has demonstrated by a preponderance of the evidence that  
21 Respondent wilfully violated the conditions of probation ordered by the Supreme Court in its May  
22 30, 1997, order in Supreme Court matter S059794 (State Bar Court Case Nos. 91-O-7793, et al.) by  
23 failing to pay restitution and provide proof thereof to the State Bar’s Probation Unit for the quarters  
24 ending July 10 and October 10, 1999, January 10, April 10, July 10 and October 10, 2000, January  
25 10, April 10, July 10 and October 10, 2001, and January 10, 2002. These conclusions warrant  
26 revocation of probation as provided by section 6093(b).

#### 27 **5. DISCIPLINE TO BE IMPOSED.**

##### 28 **A. Aggravating Circumstances.**

Respondent has a prior record of discipline. (Standard 1.2(b)(i), Standards for Attorney

1 Sanctions for Professional Misconduct (“Standards”).) In Supreme Court order SO59794, the  
2 underlying matter, which is based upon State Bar case no 91-O-07793 et al., Respondent stipulated  
3 to 10 counts of wilfully violating rule 1-300 of the Rules of Professional Conduct of the State Bar  
4 of California,<sup>8</sup> 13 counts of wilfully violating rule 3-110(A), five counts of wilfully violating rule  
5 3-310(B), 7 counts of wilfully violating rule 4-100(B)(4), 3 counts of wilfully violating rule 3-  
6 700(D)(1), 11 counts of wilfully violating Business and Professions Code section 6068(m),<sup>9</sup> and 8  
7 counts of wilfully violating section 6106.

8 The current misconduct evidences multiple acts of misconduct. (Standard 1.2(b)(ii).)

9 In addition to the acts charged in the State Bar’s motion to revoke Respondent’s probation,  
10 Respondent also wilfully violated the conditions of his probation by failing to timely file reports  
11 from an accountant which were due January 10 and April 10, 2002, and failed to timely file a few  
12 quarterly reports. This conduct constitutes wilful violations of sections 6068(k), 6013 and 6093(b).

13 Respondent’s failure to comply with the probation conditions after being reminded by the  
14 State Bar demonstrates indifference toward rectification of or atonement for the consequences of his  
15 misconduct. (Standard 1.2(b)(v).)

16 **B. Mitigating Circumstances.**

17 Respondent presented the testimony of five character witness, including that of three  
18 witnesses to whom he is related, who testified as to his good moral character. Most witnesses were  
19 of the belief that Respondent would make restitution if he was financially able to do so. (Standard  
20 1.2(e)(vi).)

21 **Edward L. Masery.**

22 Edward L. Masery (“Masery”) is an attorney who testified on Respondent’s behalf. Masery  
23 is a partner in the law firm of Masery & Vittito and is currently the mayor of Thousand Oaks. (See  
24 Exhibit B.)

25 Masery first met Respondent in 1980 or 1981 when he opened a law office in Woodland

26 \_\_\_\_\_  
27 <sup>8</sup>Unless otherwise indicated, all further references to rules shall be to the Rules of  
Professional Conduct of the State Bar of California.

28 <sup>9</sup>Unless otherwise indicated, all further references to sections refer to provisions of the  
California Business and Professions Code.

1 Hills. Masery employed Respondent in the 1980s. He states that Respondent mentored his then  
2 new law partner, James W. Vittito ("Vittito"). He was absolutely pleased with Respondent's  
3 services and has maintained a business, professional and social relationship with Respondent. He  
4 occasionally socializes with Respondent at Bar functions and at the home of Vittito. He has no  
5 recollection of socializing with the Respondent since June, 1997.

6 Masery has no position available at his law firm to employ Respondent. He is not aware of  
7 the Respondent's current employment or work situation. Nor is he aware of the Respondent's  
8 financial situation during the past few years. However, he believes the Respondent was working  
9 very hard on the Le Bon Café venture, as he personally got involved with the Respondent in that  
10 venture.

11 Masery states he has read the background regarding Respondent's problems with the State  
12 Bar and is aware of his financial difficulties. He believes Respondent has the highest moral  
13 character and is a man of his word. He does not believe the Respondent would shirk his  
14 responsibility to pay back the Bar.

15 **Ronald Diller.**

16 Ronald Diller ("Diller") is the owner of Southern California Medical/Legal Consultants and  
17 a software company. He represents hospitals to recover medical liens. He has owned the business  
18 since 1987.

19 Diller first met the Respondent years ago when he was a client of Respondent's in a workers'  
20 compensation case, and they have remained friends.

21 Diller has employed Respondent to make appearances in workers' compensation matters,  
22 prepare briefs and negotiate cases. He has employed Respondent since February, 2002. Diller  
23 would like to employ Respondent on a full-time basis and would pay him between \$72,000-  
24 \$75,000, but that position is not final. He is hoping to hire Respondent in September, 2002.  
25 Respondent is presently an independent contractor and earns \$300 per appearance.

26 Diller states Respondent is a reliable worker and he has no concerns regarding his honesty  
27 and diligence. Diller is aware that Respondent needs to make restitution.

28 Diller would like to hire Respondent to be an attorney on his staff, to perform appellate and  
legal work, as well as supervise others. Respondent's part-time work with Diller has been sporadic.

1 **Judge Barry R. Goldman.**

2 Judge Barry R. Goldman ("Judge Goldman") has been a workers' compensation judge in  
3 Van Nuys since 1989. Judge Goldman previously worked as a Los Angeles County probation  
4 officer for ten years.

5 He knows Respondent very well and previously practiced out of the same office with  
6 Respondent for about four to five years. Judge Goldman is related to Respondent through marriage.  
7 He gets together with Respondent four to five times a year at family functions. Respondent lived  
8 with Judge Goldman in 1999 because Respondent was in dire financial straits.

9 Judge Goldman testified that Respondent is an honest, forthright individual who has always  
10 been ethical but has not exercised good business judgment. He states Respondent has always acted  
11 honestly when it is known that some attorneys in the field of workers' compensation take kickbacks.

12 Judge Goldman is vaguely aware of the Respondent's misconduct as he read an article about  
13 it. He was aware of the allegations of misappropriation and Respondent's restitution obligation but  
14 not the specifics.

15 Judge Goldman does not respect Respondent's business decisions because he does not  
16 believe he has been wise with handling his money or his investments. He is aware that some of his  
17 business ventures had failed. He believes the Respondent has a long history of failed business  
18 ventures including the restaurant business. He was not surprised that his workers' compensation  
19 practice did not do so well.

20 Judge Goldman states he once offered to help Respondent find work but instead Respondent  
21 went into the coffee business. [At the time Respondent was not authorized to practice.] He was not  
22 aware of Respondent's work with the Love's restaurant.

23 Judge Goldman believes that if Respondent had a job he would pay the restitution, but if he  
24 is involved with someone else in business, maybe it is not likely he would pay.

25 **Judge Samuel A. Gordon.**

26 Judge Samuel A. Gordon ("Judge Gordon") was the presiding judge at the Workers'  
27 Compensation Appeals Board in Van Nuys from 1981-1986, having gone to the bench in 1975.  
28 Since 1986 to the present, he has been working as an arbitrator and expert witness in the area of  
workers' compensation. (Exhibit C.) He presides over approximately four to five arbitrations per

1 month. The Respondent is Judge Gordon's nephew. Between 1972-1975, Respondent and Judge  
2 Gordon had a law partnership.

3 According to Judge Gordon, there is no person more ethical, honest, trustworthy or a kinder  
4 soul than Respondent.

5 Judge Gordon is aware of the Respondent's restitution order and the fact that he was actually  
6 suspended from the practice of law for eighteen months.

7 Judge Gordon is aware of the Respondent's endeavors in the restaurant ventures and knows  
8 that he tried awfully hard to succeed. He believes that the Respondent would pay the restitution  
9 without any hesitancy.

10 According to Judge Gordon, the Respondent was hospitalized at the time of the allegations  
11 of misconduct and that Respondent's staff was at fault.

12 Judge Gordon believes that the Respondent is barely making ends meet.

13 **Judge Nathan W. Gordon.**

14 Judge Nathan W. Gordon ("Judge Nathan Gordon") is a retired United States Immigration  
15 Court Judge. He is presently of counsel with his son's law firm, practicing immigration law.  
16 (Exhibit D.) The Respondent is Judge Nathan Gordon's nephew. Judge Nathan Gordon and Judge  
17 Gordon are brothers.

18 Judge Nathan Gordon believes the Respondent's honesty is beyond repute. He testified the  
19 Respondent is a man of his word and will meet all of his obligations if the Respondent has the ability  
20 to do so. He believes if the Respondent had the ability, he would pay his obligations.

21 Judge Nathan Gordon is aware that the Respondent has had difficulties making a living,  
22 although he is not aware of the specifics of the Respondent's financial situation.

23 The Supreme Court has usually accorded significant weight to the character evidence of  
24 judges and attorneys "on the assumption that such persons possess a keen sense of responsibility for  
25 the integrity of the legal profession," especially when these character witnesses are aware of prior  
26 wrongdoing. (Cf. *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1068.) However, the evidence of  
27 Respondent's good character is somewhat discounted as most of the witnesses were not "aware of  
28 the full extent of the [Respondent's] misconduct" in either the underlying original disciplinary  
proceeding or this probation revocation matter and were not fully aware of Respondent's financial

1 situation. (Standard 1.2(e)(vi).) Furthermore, Respondent's character evidence did not represent  
2 a wide range of both the general and legal communities. (See *In the Matter of Myrdall* (Review  
3 Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387.) As such, the Court gives only some minimal  
4 weight in mitigation to the evidence of Respondent's good character.

5 **C. Discipline.**

6 The chief aims of disciplinary probation are the protection of the public and rehabilitation  
7 of the attorney. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) In determining  
8 the appropriate level of discipline, a court must consider the "total length of stayed suspension which  
9 could be imposed as actual suspension and the total amount of actual suspension earlier imposed as  
10 a condition of the discipline at the time probation was granted." (*Ibid.*)

11 Section 6093 authorizes the revocation of probation for a violation of a probation condition,  
12 and standard 1.7 requires that the Court recommend a greater discipline in this matter than that  
13 imposed in the underlying disciplinary proceeding. However, the extent of the discipline to  
14 recommend is dependent, in part, on the seriousness of the probation violation, Respondent's  
15 recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack*  
16 *supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) Furthermore, "[t]he violation of a probation condition  
17 significantly related to the attorney's prior misconduct merits the greatest discipline, especially if  
18 the violation raises a serious concern about the need to protect the public or shows the attorney's  
19 failure to undertake steps toward rehabilitation." (*In the Matter of Broderick* (Review Dept. 1994)  
20 3 Cal. State Bar Ct. Rptr. 138, 151.) A further factor in considering the gravity of a probation  
21 violation is whether or not an attorney has committed multiple violations of the same probation  
22 condition. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531.)

23 In the disciplinary matter which underlies this probation revocation proceeding, Respondent  
24 was suspended for five years and until he complied with standard 1.4(c)(ii); the execution of said  
25 suspension was stayed; and, Respondent was placed on probation for seven years, subject to  
26 conditions of probation, including an 18 month actual suspension and payment of restitution. The  
27 total length of stayed suspension which could be imposed in this probation revocation proceeding  
28 is therefore five years and until compliance with standard 1.4(c)(ii).

The discipline imposed upon Respondent in the disciplinary matter underlying this probation

1 revocation proceeding was based, in part, upon several counts involving trust account violations and  
2 the misappropriation of client funds by his employees due to a failure to supervise his employees'  
3 handling of entrusted client funds or by allowing, causing or making possible the misappropriation  
4 of client funds by his employees. Thus, Respondent's failure to make and provide proof of  
5 restitution for two and one-half years is a violation of a probation condition which is significantly  
6 related to Respondent's prior misconduct. In addition, it is a serious probation violation and resulted  
7 in multiple violations of the same probation condition.

8 The payment of restitution and the filing of quarterly reports are important steps towards  
9 rehabilitation. (*In the Matter of Broderick, supra*, 3 Cal. State Bar Ct. Rptr. at p. 152.)  
10 As the Review Department of the State Bar Court noted in *In the Matter of Taggart* (Review Dept.  
11 2001) 4 Cal. State Bar Ct. Rptr. 302:

12 The Supreme Court has held that the "significance of restitution is its  
13 probative value as an indicator of rehabilitation, not the repayment of  
14 the underlying indebtedness." (*Hippard v. State Bar* (1989) 49  
15 Cal.3d 1084, 1093.) Requiring restitution serves the rehabilitative  
16 and public protection goals of disciplinary probation by forcing  
17 attorneys to confront in concrete terms the consequences of the  
attorney's misconduct. (*Brookman v. State Bar*, [(1988)] 46 Cal.3d  
at p. 1009; *In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr.  
at p. 537.) Thus, a probationer's attitude toward the restitution is a  
significant factor to be weighed. (*Hippard v. State Bar, supra*, 49  
Cal.3d at p. 1093.)

18 (*In the Matter of Taggart, supra*, 4 Cal. State Bar Ct. Rptr. at p. 312.)

19 Although Respondent contends he did not have the funds to pay restitution, he also testified  
20 that at the time of his actual suspension, he had several thousands of dollars of personal savings  
21 which he could have used towards restitution. Nevertheless, Respondent failed to use this money  
22 towards the payment of restitution within the required time frame. Instead, he chose to invest his  
23 funds in several business ventures which unfortunately failed.

24 In addition, the Court notes several discrepancies between Respondent's testimony  
25 concerning his more recent income and the amount of income reflected on his federal income tax  
26 returns. When questioned about these discrepancies, Respondent was completely unable to explain  
27 them. Moreover, Respondent's 1998 federal income tax return reflects income from Respondent's  
28 law office even though Respondent was inactive due to his actual suspension. The result of these  
discrepancies is that Respondent has failed to rebut OCTC's evidence by demonstrating that he was

1 financially unable to pay restitution during this period.

2 Respondent was well aware of his obligation to pay restitution. Nevertheless, he made no  
3 efforts during this period to seek a modification of the probation conditions. Respondent's  
4 contention that he did not do so because he did not have enough funds to pay for an attorney to file  
5 such a motion is unpersuasive.

6 OCTC has recommended that Respondent be actually suspended for at least two years and  
7 until he complies with standard 1.4(c)(ii) as a result of his probation violations. The Court concurs.  
8 The Court finds that based on the nature of the probation violations, the limited weight given to  
9 Respondent's evidence in mitigation, and the nature and extent of the aggravating circumstances in  
10 this matter, including other uncharged probation violations, the Court finds that substantial discipline  
11 is warranted.

12 Furthermore, although not requested by OCTC, the Court finds in the interest of justice that  
13 Respondent should be required to pay the restitution originally ordered by the Supreme Court in  
14 Respondent's prior disciplinary matter. Thus, the Court shall revoke Respondent's earlier probation,  
15 lift the stay of execution of the suspension earlier imposed and, pursuant to rule 562 of the Rules  
16 of Procedure of the State Bar of California, the Court shall recommend that part of the actual  
17 suspension be stayed and that a new period of probation be imposed under certain conditions.

18 Accordingly, for the reasons set forth above, the Court finds good cause to GRANT OCTC's  
19 motion to revoke Respondent's probation.

## 20 **6. DISCIPLINE RECOMMENDATION.**

21 The Court hereby recommends to the Supreme Court that Respondent's probation in  
22 Supreme Court matter S059794 (State Bar Court Case Nos. 91-O-7793, et al.) be revoked, that the  
23 previous stay of execution of the suspension in Supreme Court matter S059794 (State Bar Court  
24 Case Nos. 91-O-7793, et al.) be lifted, and that Respondent be suspended from the practice of law  
25 for three years; that execution of said suspension be stayed; and, that Respondent be placed on  
26 probation for a period of five years, subject to the following conditions of probation:

27 1. Respondent shall be actually suspended from the practice of law for the first two years  
28 of the period of his 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 1.4(c)(ii), Rules of Procedure of the State Bar of California, Title IV, Standards for Attorney  
2 Sanctions for Professional Misconduct;

3 2. During the probation period Respondent shall comply with the State Bar Act and the  
4 Rules of Professional Conduct.

5 3. Within ten (10) days of any change, Respondent shall report to the Membership Records  
6 Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, **and** to the  
7 Probation Unit, all changes of information, including current office address and telephone number,  
8 or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section  
9 6002.1 of the Business and Professions Code.

10 4. Respondent shall submit written quarterly reports to the Probation Unit on each January  
11 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury,  
12 Respondent shall state whether Respondent has complied with the State Bar Act, the Rules of  
13 Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the  
14 first report will cover less than thirty (30) days, that report shall be submitted on the next following  
15 quarter date, and cover the extended period.

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

19 5. Respondent shall be assigned a probation monitor. Respondent shall promptly review  
20 these terms and conditions of probation with the probation monitor to establish a manner and  
21 schedule of compliance. During the period of probation, Respondent shall furnish to the monitor  
22 such reports as may be requested, in addition to the quarterly reports required to be submitted to the  
23 Probation Unit. Respondent shall cooperate fully with the monitor.

24 6. Subject to the assertion of applicable privileges, Respondent shall answer fully, promptly,  
25 and truthfully, any inquiries of the Probation Unit of the Office of the Chief Trial Counsel, and any  
26 probation monitor assigned under these conditions, which are directed to Respondent personally or  
27 in writing, relating to whether Respondent is complying or has complied with the conditions  
28 contained herein.

7. Within one (1) year after the effective date of the discipline herein, Respondent shall

1 provide to the Probation Unit satisfactory proof of attendance at a session of the Ethics School, given  
2 periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639,  
3 or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end  
4 of that session. Arrangements to attend Ethics School must be made in advance by calling (213)  
5 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing  
6 Legal Education Requirement ("MCLE"), and Respondent shall not receive MCLE credit for  
7 attending Ethics School (Rule 3201, Rules of Procedure of the State Bar.).

8 8. If Respondent opens his own law office, he shall notify the Probation Unit and his  
9 probation monitor and shall develop a law office management/organization plan which must be  
10 approved by Respondent's probation monitor within 60 days from the date on which the office is  
11 opened. This plan must include procedures to send periodic reports to clients, the documentation  
12 of telephone messages received and sent, file maintenance, the meeting of deadlines, the  
13 establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot  
14 be contacted or located, and for the training and supervision of support personnel.

15 9. Within the period of probation, Respondent shall pay restitution to the following  
16 individuals (or the Client Security Fund, if it has already paid) in the following amounts and provide  
17 satisfactory proof thereof to the Probation Unit. Respondent shall include in each quarterly report  
18 required herein satisfactory evidence of all restitution payments made by him during the reporting  
19 period.<sup>10</sup>

- 20 a) Guillermo Chuquimia, in the amount of \$2,275.00 (property damage),  
21 \$1,723.00 (bodily injury);  
22 b) Ruth Chuquimia, in the amount of \$1,911.00;  
23 c) Teresa Ustarez, in the amount of \$1,911.00;  
24 d) Pedro Silva, in the amount of \$1,959.00;  
25 e) Milagro Silva, in the amount of \$1,959.00;

---

26  
27 <sup>10</sup>If Respondent has already made restitution, in whole or in part to any of these  
28 individuals (or the Client Security Fund, if it has already paid), Respondent shall satisfy this  
probation condition by providing satisfactory proof of the payment of such restitution to the  
Probation Unit during the period of his probation.

- 1 f) Carlos A. Martinez, in the amount of \$1,500.00;
- 2 g) Elia Molina, in the amount of \$7,500.00;
- 3 h) Jose Briseno, in the amount of \$8,000.00;
- 4 i) Antonio Tello, in the amount of \$3,600.00;
- 5 j) Jose Tello, in the amount of \$3,600.00 (bodily injury), \$1,402.00 (for  
6 property damage);
- 7 k) Alfredo Gonzales Mejia, in the amount of \$4,000.00;
- 8 l) Ricardo Turcios, in the amount of \$5,775.00;
- 9 m) Rita Turcios, in the amount of \$5,950.00;
- 10 n) Carlos G. Lopez, in the amount of \$5,675.00;
- 11 o) Mario A. Jaimes, in the amount of \$5,000.00;
- 12 p) Jorge Molina, in the amount of \$1,029.00

13 10. Reporting requirements.

- 14 A. If Respondent possesses client funds at any time during the period covered by a  
15 required quarterly report, Respondent shall file with each required report a certificate  
16 from a certified public accountant or other financial professional approved by the  
17 Probation Unit, certifying that: Respondent has maintained a bank account in a bank  
18 authorized to do business in the State of California, at a branch located within the  
19 State of California, and that such account is designated as a "Trust Account" or  
20 "Client's Funds Account"; and Respondent has kept and maintained the following:
- 21 i. a written ledger for each client on whose behalf funds are held that sets forth:
    - 22 1. the name of such client,
    - 23 2. the date, amount, and source of all funds received on behalf of such  
24 client,
    - 25 3. the date, amount, payee and purpose of each disbursement made on  
26 behalf of such client, and
    - 27 4. the current balance for such client;
  - 28 ii. a written journal for each client trust fund account that sets forth:
    1. the name of such account,



1 **Department, without further hearing, until passage. But see rule 951(b), California Rules of**  
2 **Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar.**

3 It is further recommended that Respondent be ordered to comply with rule 955, California  
4 Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within thirty  
5 (30) and forty (40) days, respectively, from the effective date of the Supreme Court order herein.  
6 **Wilful failure to comply with the provisions of rule 955 may result in revocation of probation;**  
7 **suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal**  
8 **conviction.**

9 **7. ORDER REGARDING INACTIVE ENROLLMENT.**

10 Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code  
11 section 6007(d). The requirements of section 6007(d)(1) have been met: Respondent was subject  
12 to a stayed suspension, was found to have violated probation conditions, and it has been  
13 recommended that Respondent be actually suspended due to said violations. OCTC's request to  
14 enroll Respondent involuntarily inactive pursuant to Business and Professions Code section 6007(d)  
15 is therefore granted.

16 IT IS THEREFORE ORDERED that Respondent, SYDNEY JACK GORDON, be  
17 involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and  
18 Professions Code section 6007(d). This enrollment shall be effective three days following service  
19 of this order.

20 IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by Business  
21 and Professions Code section 6007(d)(2).

22 IT IS RECOMMENDED that Respondent's actual suspension in this matter commence as  
23 of the date of his inactive enrollment pursuant to this order. (Business and Professions Code section  
24 6007(d)(3).)

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**8. COSTS.**

It is further recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, to be paid in accordance with section 6140.7 of that Code. Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained under rule 284 of the Rules of Procedure of the State Bar.

Dated: October 24, 2002

  
\_\_\_\_\_  
PAUL A. BACIGALUPO  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 25, 2002, I deposited a true copy of the following document(s):

**DECISION, filed October 25, 2002**

in a sealed envelope for collection and mailing on that date as follows:

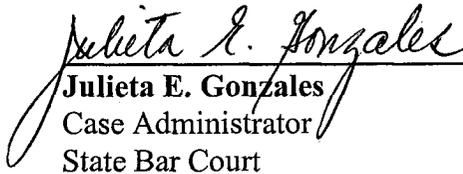
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ERICA A TABACHNICK ATTORNEY AT LAW**  
**900 WILSHIRE BLVD #1000**  
**LOS ANGELES, CA 90017**

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

**Jayne Kim, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 25, 2002**.

  
\_\_\_\_\_  
**Julieta E. Gonzales**  
Case Administrator  
State Bar Court