PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

FILED APRIL 24, 2009

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **STEPHEN KEUNG LEW,** A Member of the State Bar.	)))))))	**No. 04-O-13601** **OPINION ON REVIEW**

I. SUMMARY

This matter reflects the unfortunate consequences of failing to communicate with clients about substantial legal fees accumulated during the course of litigation. Respondent, Stephen Keung Lew, was charged with 10 violations of the State Bar Rules of Professional Conduct.[1] The charges stem from two separate lawsuits involving the same clients. In the first lawsuit, the State Bar Office of Chief Trial Counsel (State Bar) alleged that respondent failed to perform with competence, failed to communicate, charged an unconscionable fee and his conduct constituted moral turpitude. The hearing judge dismissed all four counts for insufficient evidence. We affirm dismissal of those charges.

In the second lawsuit, the State Bar alleged six counts of misconduct. The hearing judge found respondent culpable of four of the charges alleging: (1) an unconscionable fee; (2) failure to communicate; (3) failure to pay client funds; and (4) failure to perform with competence. The hearing judge dismissed two additional counts of moral turpitude related to the charges of an

[1]Unless otherwise indicated, all further references to rule(s) are to these State Bar Rules of Professional Conduct.

unconscionable fee and failure to pay client funds, and recommended a two-year stayed suspension and a three-year probation period with a six-month suspension.

We find insufficient evidence for the charges alleging failure to perform with competence and charging an unconscionable fee, and affirm dismissal of the moral turpitude allegation related to an unconscionable fee. We find respondent culpable for failing to communicate and failing to pay client funds, and adopt the hearing judge's decision as to these charges. We also find respondent culpable of one count of moral turpitude for his failing to promptly pay client funds. Reviewing the record independently, we recommend that respondent be suspended from the practice of law for two years, stayed, with a 90-day suspension, and that he be placed on probation for three years with standard terms and conditions, including restitution.

II. THE PARTIES' CONTENTIONS ON REVIEW

Respondent seeks review alleging that he is not culpable of any charges, and that no discipline should be imposed. In the alternative, he contends that if we affirm the culpability findings by the hearing judge, the discipline recommended is excessive, and instead suggests a thirty- to sixty-day suspension. The State Bar does not contest the hearing judge's dismissal of Counts 1 through 4 involving the first lawsuit, but urges this court to affirm the hearing judge's decision and disciplinary recommendation, including the six months' suspension in the second lawsuit.

III. FINDINGS OF FACT

Respondent was admitted to practice law on June 24, 1976. In 1999, he began to represent husband and wife clients, Roelf and Robin Hogen-Esch, in various legal matters. From 1999 to 2005, respondent represented them in four civil lawsuits and provided legal advice in eight to ten other matters. In 2003, a lawsuit was filed by Cooperative Adjustment Bureau (CAB) against the Hogen-Eschs for back rent from a commercial lease. Respondent had a

written fee agreement with the Hogen-Eschs for services performed on the CAB lawsuit at his usual hourly rate of $250. That case was settled in 2005. Since we agree with the hearing judge's decision to dismiss all counts in the CAB case, no further discussion of that lawsuit is required.

The second lawsuit involved the Hogen-Eschs' sale of their home in June 2003 to Ronald and Kathleen Maher. First American Title (FAT) served as the escrow agent for the sale. The Hogen-Eschs agreed to leave $5,000 in escrow pending completion of repairs, although they felt it was unnecessary since the house was covered by a home warranty. Contrary to the Hogen-Eschs' agreement to holdback $5,000, the Mahers' real estate agent unilaterally instructed FAT to withhold $10,000. FAT complied and withheld the money without written or oral permission from the Hogen-Eschs.

At FAT's request after the close of escrow, the Hogen-Eschs executed a written "Instruction to Hold Funds" authorizing the $10,000 holdback. This document was referred to throughout the proceedings as the "ratification." When it was faxed to and signed by the Hogen-Eschs, they were in the process of loading furniture onto a moving truck as they had purchased another home, and both escrows were scheduled to close on the same day. The Hogen-Eschs felt pressured to sign the ratification because they needed the proceeds from the sale of their home to pay the movers and repair a defective roof on their new house.

The Hogen-Eschs contacted respondent out of concern about FAT holding back the $10,000. Since respondent was already representing them in the CAB lawsuit, they sought his help to secure immediate return of the $10,000. The Hogen-Eschs did not pay him a retainer or enter into a separate written fee agreement. While respondent and the Hogen-Eschs did not plan a specific course of legal action, the Hogen-Eschs believed that merely a demand letter to FAT and the Mahers might accomplish their goal. Respondent wrote demand letters to FAT and the

Mahers for immediate release of the $10,000, but neither agreed. In the letter to FAT, respondent threatened to initiate a lawsuit if the money was not returned. He informed FAT that the "ratification" was not a defense since it was a self-serving, after-the-fact supplemental escrow instruction. Thereafter, on September 4, 2003, without specific authorization from his clients, respondent filed a complaint against FAT alleging conversion, negligence and breach of the escrow contract. He demanded $10,000 in general damages, plus interest, special damages, attorney fees and costs.

The FAT lawsuit proceeded over the next eight months until it settled in April 2004. The litigation was protracted. Respondent described being "papered" by the opposing law firm. Mrs. Hogen-Esch felt the opposing firm defended the case "aggressively." During the lawsuit, respondent maintained billing records, although he did not send them to the Hogen-Eschs due to the stress Mrs. Hogen-Esch reported she was experiencing. Mrs. Hogen-Esch testified that respondent sent her copies of legal documents and also telephoned on several occasions "telling grandiose stories" about his efforts in the case. Respondent's bill in the FAT litigation was over $8,000 by January 2004, about midway through the lawsuit. The hearing judge made a credibility determination that the Hogen-Eschs did not receive any bills until after the lawsuit was concluded.

On April 2, 2004, the Hogen-Eschs settled their lawsuit with FAT for $10,000. The parties agreed that each side would pay their own attorneys' fees and costs. Respondent did not inform the Hogen-Eschs at the time of settlement that his bill for the FAT lawsuit was over $15,000. On April 12, 2004, Mr. Hogen-Esch wrote to respondent requesting billing information in the CAB and FAT matters stating he had "no idea" how much was owed in attorney fees. Mr. Hogen-Esch told respondent he was unemployed and advised that "there is only the $10,000 from First American Title to start disbursing funds from."

On April 19, 2004, respondent received the $10,000 escrow monies from FAT in a check issued to Roelf Hogen-Esch c/o the opposing law firm. Respondent deposited the check into his client trust fund, but did not release any money to the Hogen-Eschs despite their repeated demands. He was well aware that the Hogen-Eschs desperately needed the money in order to make repairs to their new home and to begin payments on his bill. On July 24, 2004, respondent sent a combined billing statement to the Hogen-Eschs for both the CAB and FAT matters totaling $33,015.47 ($17,192.67 for CAB and $15,822.80 for FAT), and informed them he was applying the $10,000 to their combined account. Thereafter, the Hogen-Eschs notified respondent that they had retained other counsel, who also demanded release of the money. Three and one-half years later, as of the time of trial in November 2007, the Hogen-Eschs had yet to receive the $10,000 FAT settlement.

IV. DISCUSSION

A. Standard of Proof

This court has independently reviewed the record. (*In re Morse* (1995) 11 Cal.4th 184, 207.) A disciplinary hearing before the State Bar is an adversarial proceeding in which the State Bar has the burden of proving misconduct by evidence meeting the "clear and convincing" standard. (Rules Proc. of State Bar, rule 213.) The function of a standard of proof is to instruct the fact-finder as to the required degree of confidence in the correctness of factual conclusions in a case. (*In re Winship* (1970) 397 U.S. 358, 370 (conc. opn.).) Evidence by a "clear and convincing" standard requires that the proof be "so clear as to leave no substantial doubt" and must be "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Sheehan v. Sullivan* (1899) 126 Cal. 189, 193.)[2] We review the record by this standard of proof.

[2]Citing *Sheehan v. Sullivan*, the California Supreme Court adopted a "clear and convincing" standard of proof in *In re Angelia P.* (1981) 28 Cal.3d 908, 919, for terminating parental rights, describing the standard as requiring "a finding of high probability."

B. Culpability Findings (FAT Lawsuit)

Count 5: Rule 4-200(A) – Unconscionable Fee

We find that respondent is not culpable of charging an unconscionable fee. The State Bar contends that the $15,822 fee respondent charged in the FAT lawsuit was unconscionable because it was in excess of the amount sought and recovered in the lawsuit, the Hogen-Eschs had not been informed of the amount of their legal fees nor consented to them, and the lawsuit was "meritless and premature." Respondent asserts there was a written fee agreement for $250 per hour in the FAT matter as an implied extension of the parties' CAB agreement, and the fee charged was not unconscionable.

There was no fee agreement between the Hogen-Eschs and respondent in the FAT litigation. The CAB agreement does not extend to the FAT litigation because the FAT lawsuit was not "of the same general kind as previously rendered to and paid for by the client." (Bus. & Prof. Code, § 6148, subd. (d)(2).) In the absence of a valid fee agreement, compensation is based on the theory of quantum meruit. (*Spires v. American Bus Lines* (1984) 158 Cal.App.3d 211, 216.) The State Bar did not prove by clear and convincing evidence that respondent's compensation in the FAT case was unconscionable.

It is settled that a gross overcharge by an attorney may warrant discipline. (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.) Rule 4-200(A) specifically prohibits an attorney from entering into an agreement for, charging or collecting an illegal or unconscionable fee. A fee is unconscionable when it is so exorbitant and disproportionate to the services performed as to "shock the conscience" and often involves an element of fraud or overreaching that practically constitutes an appropriation of client funds under the guise of fees. (*In re Goldstone* (1931) 214 Cal. 490, 499.)

To determine whether a fee meets the test of unconscionability, rule 4-200(B) provides the guidance of 11 nonexclusive factors,[3] several of which apply here. The Hogen-Eschs had a long-standing relationship with respondent. They knew from previous lawsuits that his hourly billing rate was $250. Although they might not be considered "sophisticated" clients, they were at least familiar with the legal process and respondent's fee structure, as the FAT case was the fourth civil lawsuit where respondent represented them. Further, even though there was no fee agreement in the FAT matter, Mrs. Hogen-Esch was aware that legal fees were being incurred as she was informed about the progress of the lawsuit. During the eight months the case was pending, the Hogen-Eschs told respondent they were anxious for return of the money and grateful for his efforts. Even though respondent had demanded $10,000 in damages plus attorney fees and costs, the FAT lawsuit ultimately settled for $10,000. Unfortunately, at the time of the settlement, respondent failed to inform the Hogen-Eschs that his bill exceeded their settlement amount.

Under these circumstances, we find that respondent's fee of $15,822 is not unconscionable. Although higher than the recovery received and despite respondent's negligent failure to inform his clients of the litigation costs, the fee was based on genuine legal services that the Hogen-Eschs knew were being performed. It does not represent the type of fraud or

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[3](1)The amount of the fee in proportion to the value of the services performed.
(2) The relative sophistication of the member and the client.
(3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.
(4) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member.
(5) The amount involved and the results obtained.
(6) The time limitations imposed by the client or by the circumstances.
(7) The nature and length of the professional relationship with the client.
(8) The experience, reputation, and ability of the member or members performing the services.
(9) Whether the fee is fixed or contingent.
(10) The time and labor required.
(11) The informed consent of the client regarding the fee.

overreaching by an attorney that shocks the conscience and warrants discipline as an unconscionable fee.[4] Count 5 is therefore dismissed with prejudice.

Count 6: Business & Professions Code Section 6106 – Moral Turpitude

Having found respondent not culpable of charging an unconscionable fee, we affirm the hearing judge's ruling dismissing Count 6 with prejudice.

Count 7: Rule 3-500 – Failure to Communicate

We adopt the hearing judge's finding of culpability that respondent violated rule 3-500 by willfully failing to keep his clients reasonably informed about significant developments. Respondent neglected to send his clients regular billing statements and did not advise them that their legal fees would exceed the settlement. This prevented them from making a fully informed decision about settling their case for $10,000. We see respondent's failure to communicate the litigation costs to his clients as central to and a cause of the further misconduct for which we have found culpability.

Count 8: Rule 4-100(B)(4) – Failure to Pay Funds

We adopt the hearing judge's finding of culpability that respondent failed to promptly pay client funds as requested, in violation of rule 4-100(B)(4). Respondent failed to deliver the $10,000 settlement funds to the Hogen-Eschs, despite their repeated requests, a demand by new counsel, and the lack of any agreement to retain the money. Respondent willfully violated rule 4-100(B)(4) by failing to pay his clients the requested settlement funds for three and one-half years.

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[4](See *Aronin v. State Bar* (1990) 52 Cal.3d 276, 285 [fee that "seems high" or is in fact high is not same as unconscionable fee]; *Herrscher v. State Bar* (1935) 4 Cal.2d 399, 402 [mere fact that fee charged in excess of reasonable value of services will not of itself warrant discipline]; *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 237 ["a disciplinary proceeding is seldom the proper forum for attorney fee disputes"].)

Count 9: Business & Professions Code Section 6106 – Moral Turpitude

The State Bar alleged respondent acted with moral turpitude, dishonesty or corruption in Count 9, claiming he failed and refused to deliver the $10,000 settlement to the Hogen-Eschs and instead applied it to his own fees. There is no dispute that respondent unilaterally decided to withhold that money for his outstanding fees in the CAB and FAT matters. He did not have any legal right to retain the funds he received in trust for his clients since there was no lien or any other agreement to do so. (*Brody v. State Bar* (1974) 11 Cal.3d 347, 350 fn. 5 [attorney may not unilaterally determine his own fee and withhold trust funds to satisfy it even if entitled to reimbursement for his services].) In fact, respondent had an affirmative ethical duty to promptly deliver the funds. While we do not find willful misappropriation since respondent maintained the money in trust, he disregarded his fiduciary obligations by failing to promptly release the money. This conduct constitutes gross negligence amounting to moral turpitude. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410 [where attorney's fiduciary trust account duties are involved, finding of gross negligence will support violation of § 6106].)

Count 10: **Rule 3-110(A) – Failure to Perform with Competence**

The State Bar alleges that respondent is culpable of violating rule 3-110(A) for failing to perform legal services with competence when he filed a "meritless and premature" lawsuit against FAT because the Hogen-Eschs had ratified FAT's $10,000 holdback and the repairs had not been completed. We find the evidence is insufficient to establish this violation.

The courts have struggled to define what constitutes a "meritless" or "frivolous" claim due to public policy concerns and an attorney's conflicting objectives. Strong public policy in favor of peaceful resolution of disputes requires attorneys to freely advance legal remedies on behalf of clients without fear of personal liability. (See *Goodman v. Kennedy* (1976) 18 Cal.3d 335). Counsel often have conflicting obligations to diligently pursue any and all potentially

meritorious claims for their clients and yet to refrain from prosecuting frivolous actions. (*Kirsch v. Duryea* (1978) 21 Cal.3d 303, 309.) In *Murdock v. Gerth* (1944) 65 Cal.App.2d 170, 179, the court instructed that "[i]f the issue which the attorney is called upon to decide is fairly debatable, then under his oath of office, he is not only authorized but obligated to present and urge his client's claim upon the court." Indeed, courts have disciplined attorneys who do not adequately protect their clients' interests. (See *Lewis v. State Bar* (1981) 28 Cal.3d 683.)

In *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, the Supreme Court defined "frivolous" as it relates to the validity of appeals and/or related sanctions, and included a discussion of objective and subjective tests and their application to each other. The court instructed that the two tests are often used together to define frivolous, with one providing evidence of the other, and both being relevant to an ultimate determination of whether an appeal is frivolous.[5] "The difficulty is in striking a balance that will ensure both that indefensible conduct does not occur and that attorneys are not deterred from the vigorous assertion of clients' rights." (*Flaherty, supra,* 31 Cal.3d at p. 648.) The court warned, however, that any definition of frivolous in the filing of a claim must scrupulously avoid a serious chilling effect on the assertion of a litigant's rights. "Counsel and their clients have a right to present issues that are arguably correct, even if it is extremely unlikely that they will win on appeal." (*Id.* at p. 650.) Ultimately, the *Flaherty* court concluded that an appeal is frivolous "only when it is prosecuted for an improper motive – to harass the respondent or delay the effect of an adverse judgment – or when it indisputably has no merit – when any reasonable attorney would agree that the appeal is totally and completely without merit." (*Ibid.*)

We find that the FAT lawsuit was neither meritless nor frivolous. The Hogen-Eschs wanted FAT to *immediately* return the $10,000 and sought respondent's assistance. When the

[5]For example, the total lack of merit of an appeal is evidence that appellant intended it only for delay. *Flaherty, supra,* 31 Cal.3d at p. 649.

demand letters failed, respondent filed the FAT lawsuit. Objectively, respondent's legal theory for the lawsuit is not totally without merit. As an escrow company, FAT had a fiduciary obligation to the Hogen-Eschs, yet unilaterally withheld twice the agreed amount without the Hogen-Eschs' prior written or oral consent. FAT's alleged breach of fiduciary duty and the possibility that the Hogan-Eschs signed the later ratification under duress present at least colorable legal claims for immediate return of the funds. Subjectively, while mindful of the credibility finding by the hearing judge that respondent lacked good faith in filing the FAT lawsuit, we do not find clear and convincing evidence that he acted in bad faith. As noted above, there was an objectively reasonable basis upon which to file the action.[6] Respondent is therefore not culpable of violating rule 3-100, and this charge is dismissed with prejudice.

V. DISCIPLINE

A. Mitigation

In mitigation, the hearing judge found that respondent has no prior record of discipline (std. 1.2(e)(i)), established good character (std. 1.2(e)(vi)), and engaged in pro bono activities (*Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [pro bono work entitled to mitigation]). Upon independent review, we adopt the hearing judge's findings regarding mitigation. Respondent had an unblemished record of discipline for 27 years, from 1976 to 2003, when the misconduct occurred. This discipline-free record is quite compelling and entitled to great weight in mitigation.

Respondent presented six witnesses to establish his good character. Two attorneys, a client, a certified public accountant, a realtor, and a friend testified. Each witness had limited knowledge of the pending charges but all testified confidently and credibly about respondent's

[6]We also do not find that the lawsuit was premature. Although the $10,000 was scheduled to be released upon completion of the repairs, the gravamen of the complaint was the immediate return of the monies and focused on the fact that FAT, while acting as an escrow fiduciary, withheld money without the Hogen-Eschs' consent.

good character, honesty, trustworthiness, diligence and loyalty in the legal profession. Therefore, mitigating credit is given for respondent's good moral character.

Respondent also presented credible evidence, albeit limited, that he voluntarily served for many years as a temporary judge in small claims, municipal, and superior courts. He also has acted as an arbitrator and referee. Respondent's pro bono service is a mitigating factor.

B. Aggravation

In aggravation, the hearing judge found there were multiple acts of misconduct (std. 1.2(b)(ii)), and resulting client harm (std. 1.2(b)(iv)). We find that respondent committed three acts of misconduct: failing to communicate; failing to pay client funds; and moral turpitude based on gross negligence. We also conclude that respondent's misconduct caused significant harm to the Hogen-Eschs by depriving them of the $10,000 FAT settlement funds for three and one-half years.

C. Degree of Discipline

The primary purposes of disciplinary proceedings are the protection of the public, the courts and the legal profession, the maintenance of high professional standards for attorneys, and the preservation of public confidence in the legal profession. (Std. 1.3; *Bach v. State Bar* (1987) 43 Cal.3d 848, 856-857.) There is no fixed formula for determining the proper level of discipline. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.) Ultimately, the appropriate degree of discipline to be recommended rests on a balanced consideration of all relevant factors. The Standards for Attorney Sanctions for Professional Misconduct,[7] which serve as guidelines, are accorded great weight (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580). When two or more acts of misconduct

[7]Unless otherwise indicated, all further references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

are found in a single proceeding and different sanctions are prescribed by the standards, the more severe of the applicable sanctions for these violations should be imposed (std. 1.6(a)), adjusted as appropriate to reflect the balance of aggravating and mitigating circumstances. (Std. 1.6(b).)

Three standards guide us in this case. Standard 2.2(b) provides that a violation of rule 4-100 that is not the result of willful misappropriation shall result in at least a three-month actual suspension, irrespective of mitigating circumstances. Standard 2.3 provides that an act of moral turpitude shall result in actual suspension or disbarment, depending on the extent of harm, the magnitude of misconduct and the degree to which it relates to the member's acts within the practice of law. Standard 2.4 (b) provides that willful failure to perform services, including failure to communicate, shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client. We focus on standard 2.2(b) under the facts of this case because it calls for a specified period of three months' actual suspension, notwithstanding mitigation.

While noting the standard, we have weighed the aggravating and mitigating circumstances. Respondent is of good moral character, has performed pro bono activities and has no prior discipline in almost three decades of practice. He maintained the $10,000 at issue in a trust fund and his culpability for an act of moral turpitude is based on gross negligence rather than misappropriation involving deceit. However, respondent has materially breached a clear fiduciary duty related to trust accounting and caused his clients significant harm by depriving them of their settlement funds. Any belief that he was entitled to retain this money under these circumstances and for such a lengthy period is unreasonable. We acknowledge that respondent's misconduct appears to be an isolated incident in his professional career, yet this lengthy practice did not aid him in avoiding basic violations of the rules.

In this situation, to deviate from the 90-day actual suspension suggested by standard 2.2(b) would not serve the purposes of attorney discipline. We therefore recommend a 90-day actual suspension, which is supported by comparable case law, as the appropriate sanction to ensure discipline proportionate to the misconduct. (See *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47 [90-day actual suspension for misconduct involving violation of former rule 8-101(B)(4), moral turpitude based on gross negligence and failure to communicate where attorney had 14 years of discipline-free practice]; see also *In the Matter of Kelly* (1991) 53 Cal.3d 509 [120-day actual suspension for misconduct in two client matters for failure to pay funds, willful misappropriation without deceit or intent to harm, and other trust violations where attorney had 13 years of discipline-free practice]; *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752 [60-day actual suspension in two client matters for violations of rules 4-100(B)(3), 3-300 and 3-310 where attorney had 25 years of discipline-free practice].)

VI. RECOMMENDATION

For the foregoing reasons, we recommend that respondent STEPHEN KEUNG LEW be suspended from the practice of law in the State of California for two years, that the suspension be stayed, and that respondent be placed on probation for three years, subject to the following conditions:

1. Respondent must be suspended from the practice of law for a minimum of the first 90 days of his probation, and he will remain suspended until the following requirements are satisfied:

   i. He reimburses Roelf and Robin Hogen-Esch in the amount of $10,000 plus 10% interest per annum from May 24, 2004, or the Client Security Fund in accordance with

Business and Professions Code section 6140.5, and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles;[8]

ii. If he remains suspended for two years or more as a result of not satisfying the preceding conditions, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

2. Respondent must comply with all other conditions of probation recommended by the Hearing Department of the State Bar Court in its Decision filed on January 31, 2008.

3. At the expiration of the period of probation, if respondent has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order 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.

VIII. RULE 9.20

We further recommend that respondent be ordered to comply with rule 9.20, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) days, respectively, from the effective date of the Supreme Court order

[8]May 24, 2004, is 30 days after the Hogen-Eschs first demanded the $10,000. Respondent will have to resolve any fee dispute with them in the appropriate forum, as we express no opinion regarding his right, if any, to fees in this case.

herein. Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal conviction.

IX. COSTS

Finally, we recommend that costs be awarded to the California State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, J.

We concur:

REMKE, P. J.

EPSTEIN, J.