PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **GREGORY DEAN ESAU**, A Member of the State Bar.	)	**05-N-04411** **OPINION ON REVIEW AND ORDER**

This matter illustrates the serious consequences of an attorney's extended inattention to State Bar disciplinary proceedings and his repeated disregard of Supreme Court orders. Respondent, Gregory Esau, was found culpable of violating Business and Professions Code section 6103[1] as the result of disobeying a Supreme Court order requiring him to comply with California Rules of Court, rule 955.[2] Respondent does not contest the hearing judge's culpability findings or the disciplinary recommendation that he be suspended from the practice of law for four years, stayed, and that he be placed on probation for four years, with an actual suspension for two years and until he complies with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.[3]

The State Bar seeks review and urges disbarment as the appropriate discipline recommendation in light of respondent's history of probation violations. The State Bar also asserts that the hearing judge erroneously gave credit in mitigation under standard 1.2(e)(iv),

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

[2]Effective January 1, 2007, rule 955 was re-numbered as rule 9.20. All further references to former rule 955 shall be denominated as rule 9.20.

[3]Unless otherwise noted, all further references to "standard(s)" are to the Standards for Attorney Sanctions for Professional Misconduct.

finding that respondent's alcoholism contributed to his misconduct. Further, the State Bar argues that no mitigating credit should have been given for respondent's three good character witnesses under standard 1.2(e)(vi). Finally, the State Bar contends that respondent's cooperation in entering into a stipulation is not entitled to any weight in mitigation under standard 1.2(e)(v) and that, contrary to the hearing judge's finding, he has not demonstrated remorse for his actions under standard 1.2(e)(vii). For reasons discussed herein, we agree with most of the State Bar's contentions, including the assertion that disbarment is the proper discipline under these circumstances.

Respondent's underlying misconduct, which involved the wrongful retention of $1700 in advanced fees in the state of Washington, resulted in a lenient discipline in California of a private reproval with conditions attached for 12 months. Had respondent complied with those conditions, he would not be facing disbarment. However, since his private reproval, respondent has had his reproval period extended by one year, has received a six-month stayed suspension and two years' probation, has had his probation revoked and has suffered a six-month actual suspension. This increasingly strict discipline should have provided respondent with both the incentive and the opportunity to comply with the conditions of his probation, and yet he is before us a *fourth* time for violating another court order.

Our de novo review of the record (*In re Morse* (1995) 11 Cal.4th 184, 207) compels the conclusion that the discipline recommended by the hearing judge is insufficient. Indeed, the finding that respondent willfully violated a court order requiring his compliance with rule 9.20 is sufficient grounds for disbarment when, as here, the evidence in mitigation is not compelling. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186-1188; *Powers v. State Bar* (1988) 44 Cal.3d 337, 342.) Moreover, respondent's violation of a court order is compounded by his repeated failure to comply with even the most basic terms of his probation, such as filing his quarterly probation reports, updating his membership records, and taking the Multistate Professional Responsibility Exam (MPRE). His apparent lack of concern for his license to practice law in California demonstrates that he is an unsuitable

candidate for further disciplinary probation. We therefore recommend disbarment as the appropriate discipline.

I. FACTUAL AND PROCEDURAL BACKGROUND

Respondent was admitted to the practice of law in California on December 12, 1983, and has been a member of the California State Bar since that time. He practiced law in California until 1991, when he moved to the state of Washington and was admitted to the Washington State Bar. After moving to Washington, respondent had no California clients, and practiced exclusively in Washington, except for two limited appearances in California in 1996 and 1997. His primary practice area is family law, and he has achieved a relatively successful career in Washington following the disciplinary action against him in that state.

Respondent has a history of alcohol abuse. Between 1996 and 1997, he voluntarily sought help from the Lawyers' Assistance Program in Washington, and has been sober since August 15, 1998. He began attending Alcoholics Anonymous five months prior to the disciplinary hearing below.

Respondent's entanglement with the attorney discipline system began in July 1996 in Washington when he failed to return an advanced fee of $1700 after the client terminated his services and requested a refund. The client sued respondent and obtained an uncontested judgment for $1751. Respondent paid the judgment, but the matter was referred to the Washington State Bar. In January 2000, the Disciplinary Board of the Washington Bar ordered that respondent be publically reprimanded in accordance with a stipulation as to culpability [4] and discipline.

In May 2000, the State Bar filed a Notice of Disciplinary Charges (NDC) against respondent, based on the disciplinary proceeding in Washington. On May 19, 2000, the State

[4]Respondent stipulated to violations of the Washington Rules of Professional Conduct, rules 1.14(a), failing to deposit client funds into a trust account; 1.14(b)(3), failing to render an accounting; 1.4(b)(4), failing to promptly pay client funds on demand; and 1.5, which requires the proper termination of representation. Respondent has had no further disciplinary matters in Washington.

Bar Court approved the stipulation of the parties as to the facts, conclusions of law, and disposition, and respondent was privately reproved, with conditions attached for 12 months.

Thereafter, respondent violated several of the attached conditions. Specifically, he failed to file two quarterly reports indicating compliance with all provisions of the State Bar Act and Rules of Professional Conduct; he failed to update his address with membership records; and he failed to submit proof of completion of three hours of Minimum Continuing Legal Education (MCLE) courses in ethics. The hearing department extended the conditions attached to the private reproval for an additional 12 months, as stipulated by both parties, by an order filed on July 16, 2001.

However, respondent again failed to comply with these conditions and he also failed to submit four more quarterly reports, failed to complete the three hours of MCLE courses in ethics, and failed to take and pass the MPRE. As a result, the State Bar filed another NDC on May 22, 2002, charging respondent with violating rule 1-110 of the Rules of Professional Conduct for the State Bar of California for failing to comply with the attached conditions to his private reproval.

That proceeding was resolved by stipulation, wherein respondent was found to have willfully violated rule 1-110 by not complying with the conditions attached to reproval and was placed on six months' stayed suspension, two years' probation on conditions, and required to pass the MPRE within one year. No actual suspension was recommended. On March 18, 2003, the Supreme Court issued an order imposing the recommended discipline.

Respondent subsequently violated the conditions of his probation required by the March 18, 2003, order when he again failed to submit four quarterly probation reports, and failed to report a change of address within 10 days as required. On February 17, 2005, respondent and the State Bar entered into a stipulation as to culpability for the violation of respondent's conditions of probation, revoking his probation, and imposing discipline of six months' actual suspension. Further, the stipulation required respondent's compliance with rule 9.20. By order filed on June 10, 2005, the Supreme Court imposed the stipulated discipline and required respondent's

compliance with rule 9.20 and performance of the acts in subdivisions (a) and (c) of rule 9.20 within 30 and 40 days, respectively.

Respondent received the Supreme Court order, but he did not file the affidavit as required by rule 9.20(c).[5] He did not file the affidavit of compliance until December 1, 2005 (104 days late), the same date the State Bar filed the NDC initiating the proceeding which is the subject of this review. The NDC charged respondent with violating Business and Professions Code section 6103 by failing to obey a court order.

At the hearing below, which commenced on August 15, 2006, the State Bar presented evidence and the hearing judge admitted, without objection, certified copies documenting respondent's original discipline and the subsequent compliance orders, including the Supreme Court's rule 9.20 order. Respondent stipulated as to culpability, and the trial proceeded with a determination of the appropriate discipline.

Respondent presented three witnesses who attested to his good character. Allen Hart, a client represented by respondent in a child custody proceeding, had known respondent for a year and a half, but he did not know that respondent was the subject of discipline in California or Washington until just prior to the current proceeding. Hart testified that respondent is an honest man based on his brief experience as respondent's client. Jeff McNamara, an attorney in Washington, had known respondent in a professional capacity for approximately two years because they worked in the same office. McNamara was unaware of respondent's discipline in both Washington and California until respondent asked him to be a witness in these proceedings. McNamara also testified he was a recovering alcoholic and acted as a sponsor for four attorneys, although he was not respondent's sponsor. McNamara testified that respondent had a high level of honesty based on his observations of respondent's interactions with clients. He referred two clients to respondent despite his knowledge of the disciplinary actions against respondent. When questioned regarding respondent's failure to comply with the conditions attached to his

[5]Although respondent had no clients in California to notify, rule 9.20(a) requires an attorney to file an affidavit even if he or she has no clients and there is no opposing counsel to inform. (*Bercovich v. State Bar, supra,* 50 Cal. 3d at p. 130.)

discipline, McNamara stated he "understood it to be a travail of clerical error." Keith Kemper was a partner in the firm in which respondent is of-counsel. He testified that he knew respondent both professionally and socially for approximately nine years prior to this disciplinary proceeding, and was instrumental in respondent's employment with Kemper's firm. Respondent disclosed his disciplinary history with the state of Washington to Kemper and the other partners prior to joining the firm. Kemper did not become aware of respondent's disciplinary record in California until three months prior to the hearing below. He testified that respondent is an honest man and that he was remorseful.

Respondent testified briefly that he was involved in church activities, coached Little League, worked with a mission to help other recovering addicts and alcoholics, and volunteered at a legal clinic. He did not offer any evidence to substantiate the nature and extent of these activities.

Respondent also testified that his recent participation with Alcoholics Anonymous had made him aware that some of the "keys that lead one to alcoholism" were self-deception, denial, fear, and "not wanting to face certain things." These character flaws, according to respondent, explain how he was able to maintain his sobriety for eight years and establish a thriving practice in Washington as a member of a respected law firm, yet ignore and avoid his duties as an attorney in California. No expert testimony was presented to corroborate respondent's testimony.

II. DISCUSSION

The underlying facts regarding respondent's culpability were stipulated to by the parties, which supports a finding that respondent violated section 6103 by failing to obey a court order. Thus, we direct our discussion solely to the recommended discipline.

A. Aggravation

The hearing judge found respondent's prior record of discipline to be an aggravating circumstance. (Std. 1.2(b)(i).) We not only agree with the hearing judge, but find this to be strong evidence in aggravation and, as discussed below, it is outcome-determinative. Since respondent's initial disciplinary proceeding in California, the State Bar Court has been required

to intervene four times in order to bring respondent into compliance with the terms of his probation.[6] The need for the court's repeated involvement is both inexplicable and inordinate.

B. Mitigation

To be weighed against the evidence in aggravation is the evidence in mitigation, which respondent has the burden of proving by clear and convincing evidence. (Std. 1.2(e); *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 311.) After considering respondent's evidence in mitigation, the hearing judge found "that the mitigating circumstances in the present proceeding are strong and warrant a departure from disbarment." We respectfully disagree.

In our view, the hearing judge incorrectly gave credit in mitigation for respondent's emotional problems under standard 1.2(e)(iv), which provides that extreme emotional difficulties or physical disabilities may be considered as mitigating circumstances, *provided* "expert testimony establishes [the disability] was directly responsible for the misconduct . . . and further provided that the member has established through clear and convincing evidence that he or she no longer suffers from such difficulties or disabilities."

Here, no expert testimony was presented establishing that respondent's emotional problems were causally related to his probation violations. In the absence of an expert witness, we are left to speculate about the relevance and weight to be given to respondent's testimony that among the "character defects" inherent in alcoholism is "self-deception," which caused him to ignore his duties in California. As the hearing judge observed, "it is difficult to understand how respondent was able to competently and successfully practice law in Washington during the same period he was unable to comply with the various conditions imposed on him in California." (*Bercovich v. State Bar*, *supra*, 50 Cal.3d 116, 119, 127-129 [questioning why physical and emotional problems offered as mitigation for noncompliance with rule 9.20 would not also affect the attorney's ability to competently practice law and not allowing mitigation in the absence of

[6]We include in our analysis the necessity of the hearing department's intervention by order filed on July 16, 2001, extending the conditions attached to respondent's private reproval for an additional 12 months after he failed to timely satisfy them.

expert testimony].) Also, without the aid of expert testimony, we are unable to reasonably evaluate the temporal aspects of respondent's personal issues surrounding his alcohol consumption, which stopped in 1998, with his failure to address his disciplinary obligations in California, which did not commence until 2000. We therefore credit respondent with no mitigation under standard 1.2(e)(iv).

The hearing judge also found respondent's three character witnesses were sufficient to establish mitigation. (Std. 1.2(e)(vi).) Again, we disagree. Standard 1.2(e)(vi) mandates that "an *extraordinary* demonstration of good character of the member attested to by a *wide range* of references in the legal and general communities and who are aware of the full extent of the member's misconduct" must be shown to be considered a mitigating circumstance. (Italics added.) Even though we do not disturb the hearing judge's determination that respondent's three character witnesses were "*extremely* credible" (italics in original), we nonetheless find that the substance of their testimony does not constitute clear and convincing evidence of respondent's good character. Two of the witnesses had a relationship with respondent for less than two years, and neither was aware of the full extent of respondent's disciplinary proceedings until called to testify. The third witness knew respondent for nine years but did not become aware of respondent's disciplinary record in California until three months prior to the hearing.

We further find that the three witnesses do not constitute a wide range of references, and as such, we afford only minimal weight to their testimony. (*In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430 [no mitigation for testimony from two attorneys and one client because they were not considered a wide range of references]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363 [limited weight given to testimony of three attorneys and three clients because they did not constitute a broad range of references]; cf. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591-592 ["significant" mitigative weight given to testimony of three witnesses who had long-standing familiarity with attorney and broad knowledge of his good character].)

The hearing judge found that respondent's good character was further established by "his own credible testimony as to his community service and pro bono activities." Even accepting respondent's testimony as credible, we only accord it minimal weight in mitigation as we are unable to assess the breadth or significance of these activities due to the brevity and lack of detail provided by respondent.

The hearing judge also allowed "some mitigation" in favor of respondent because he entered into a stipulation with the State Bar as to the facts that established his culpability. (Std. 1.2(e)(v).) We agree. We routinely recognize limited mitigation when a respondent stipulates to material facts. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 913.)

Lastly, the hearing judge granted "some" weight in mitigation for the recent steps respondent had taken to "insure that he complies with his California disciplinary conditions," and that he eventually filed his rule 9.20(c) affidavit, albeit 104 days late. The hearing judge found this demonstrated respondent's recognition of wrongdoing and remorse. (Std. 1.2(e)(vii).) We do not agree. During the hearing below, respondent testified: "I don't blame anybody for [failing to comply with rule 9.20] other than myself because nobody's at fault. I can't say that I wasn't given a fair shake or – fair warning." He also ascribed his probation failures to his mistaken belief that these California proceedings were "ancillary" to and of "lesser significance" than his Washington disciplinary matter, where he had made good progress. This testimony is unpersuasive, given that respondent has repeatedly stipulated to his probation violations, yet in every instance, his seeming recognition of wrongdoing has been undercut by a continued failure to comply with stipulated discipline. In light of this history, respondent's attestations of his recognition of wrongdoing do not constitute clear and convincing evidence of mitigating circumstances under standard 1.2(e)(vii).

C. Level of Discipline

Fundamentally, the purpose of discipline is not to punish the attorney, but to protect the public. (Std. 1.3; *Bach v. State Bar* (1987) 43 Cal.3d 848, 856.) In assessing the proper level of discipline, we consider the standards, prior decisional law, and the facts and circumstances unique to this case. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr.

980, 994.) Respondent is culpable of violating section 6103,[7] and therefore the applicable standard is standard 2.6(b), which provides that a violation of this section shall result in disbarment or suspension "depending on the gravity of the offense or the harm, if any, to the victim. . . ." Additionally, under standard 1.7(b),[8] "[d]isbarment is also the presumptively appropriate discipline if a member found culpable of professional misconduct has a record of two impositions of discipline. (Std. 1.7(b).) Prior discipline includes discipline imposed for violation of probation. (Std.1.2(f); [Citations.].)" (*In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 388.)

The standards are afforded "great weight" (*In re Silverton* (2005) 36 Cal.4th 81, 92), but they are intended to be flexible in nature so that we may "temper the letter of the law with considerations peculiar to the offense and the offender. [Citations.]" (*In the Matter of Van Sickle, supra,* 4 Cal. State Bar Ct. Rptr. at p. 994.) Our concern here is respondent's repeated non-compliance with his probation and his willful disobedience of court orders resulting in a violation of rule 9.20. We observed in *In the Matter of Pierce, supra,* 2 Cal. State Bar Ct. Rptr. at p. 388, that "[d]isbarment is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders of the Supreme Court." Moreover, since *Bercovich v. State Bar, supra,* 50 Cal. 3d 116, the decisional law has been weighted towards disbarment for violations of rule 9.20. (*Dahlman v. State Bar* (1990) 50 Cal.3d 1088, 1096 [disbarment ordered where attorney had ignored the efforts of both the State Bar and the Supreme Court to obtain his compliance with rule 9.20 and had "evidenced an indifference to the disciplinary system"]; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287 [disbarment recommended after attorney failed to comply with rule 9.20 while on interim

[7]We agree with the hearing judge that a violation of rule 9.20 is more appropriately charged under rule 9.20(d), which provides for the disbarment or suspension of a member for failure to comply with the rule. (*Lydon v. State Bar, supra,* 45 Cal.3d at p. 1187.) However, as section 6103 provides for disbarment or suspension for a violation or willful disobedience of a court order, the culpability finding and sanctions are consistent with rule 9.20(d).

[8]Standard 1.7(b) provides that when an attorney has a record of two prior disciplines, "the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

suspension from conviction of cocaine possession and client trust account violations, plus serious aggravating circumstances including practicing law while on suspension and the absence of strong mitigating circumstances]; *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322 [disbarment recommended notwithstanding attorney's participation in the proceedings, some effort at compliance with rule 9.20, and absence of client harm]; *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439, overruled on another ground in *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 916, fn. 6 [disbarment recommended, in spite of significant mitigation, for repeated probation violations and violations of rule 9.20, wherein the underlying misconduct involved abandonment of clients and failure to return unearned fees]; *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, 600 [disbarment recommended for untimely filing of rule 9.20 affidavit, falsely reporting compliance and practicing while on suspension, even though significant mitigative evidence of family misfortune, good character evidence, therapy to overcome personal problems, community service and compliance with probation obligations].)

Our decision in *In the Matter of Pierce, supra,* 2 Cal State Bar Ct. Rptr. 382, is most relevant to our analysis. In *Pierce*, the attorney initially was disciplined for a single matter involving client abandonment. Subsequently, she repeatedly defaulted in her probation proceedings and then she defaulted in a fourth disciplinary proceeding arising from her prior probation violations. In addition, after two reminders from the probation department, the attorney filed the required rule 9.20 affidavit 21 days late. Although we noted this was a "short delay" (*id*. at p. 385), and we found that the late filing was not in bad faith, we nevertheless concluded this late filing was willful. The attorney had no pending cases and therefore there was no client harm (*id*. at p. 387), but we found that the attorney's "ostrich-like behavior" resulted in her prolonged inattention to the actions taken by the State Bar and the Supreme Court. (*Id*. at p. 388.) Thus, even though "all of the proceedings stemmed from minor misconduct involving one client" (*id*. at p. 387), we concluded that disbarment was "particularly appropriate" given the attorney's demonstrated indifference to successive disciplinary orders. (*Id*. at p. 388.)

In the instant matter, we are at a loss to find any basis in fact or law justifying our departure from disbarment. The cases decided after *Bercovich* that have resulted in discipline of less than disbarment involved significant evidence in mitigation and/or substantial compliance with rule 9.20, neither of which is present here.

For example, in *Shapiro v. State Bar* (1990) 51 Cal.3d 251 (*Shapiro)*, an attorney was found culpable of collecting a fee, failing to appear on behalf of his client, and subsequently withdrawing without refunding $1,500. He also accepted a $500 fee from another client, failed to place the money in a trust account, and failed to use reasonable diligence in representing the client. After he was fired, he failed to return the unearned fee. In the third matter, he was found to have practiced law while suspended for failure to pay Bar dues. The rule 9.20 proceeding arose when the attorney filed his rule 9.20 affidavit five months late, which the Supreme Court found was willful. (*Id*. at p. 258.)

However, *Shapiro* did not involve repeated disregard of court orders and there also was substantial evidence in mitigation. (*Shapiro*, at p. 259.) The attorney had timely notified his clients and others of his suspension (*ibid*.), and his late filing was in part due to inadequate advice from his probation monitor about the requirements of the rule. (*Ibid*.) Furthermore, when the attorney learned his affidavit was deemed insufficient by the court, he contacted his probation monitor and retained a law firm to assist him with compliance. (*Ibid*.) The matter was resolved satisfactorily within several weeks, although by then the Supreme Court's referral order had already triggered State Bar disciplinary proceedings.

In addition, because all three incidents of client misconduct occurred within a fairly narrow time frame, the attorney's lack of prior discipline for 16 years was considered a mitigating factor. (*Shapiro*, at p. 259.) He also successfully evidenced that he was undergoing physical and psychological difficulties. (*Id*. at pp. 259-60.) Finally, the attorney submitted testimony from experienced practicing attorneys in the community who, aware of his misconduct, testified to petitioner's good character and his considerable ability as a lawyer. (*Id*. at p. 260.) The court thus concluded that in light of the evidence in mitigation, the appropriate discipline was a two-year suspension, stayed, with one year's actual suspension. (*Id*. at p. 261.)

In *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192 (*Rose*), the attorney had two prior records of discipline involving unreasonable delay in surrendering a case file, willful failure to communicate with clients, willful failure to provide services, willful failure to promptly and properly discharge obligations with regard to client funds and records, improper client solicitation, and improper business dealings with a client. (*Id*. at pp. 198-199.) He was ordered to comply with rule 9.20 in both matters. He timely filed his rule 9.20 affidavit in the first matter (*id*. at p. 200), and thereafter, he did not practice law, had no clients and no co-counsel to notify. (*Ibid*.) He thus believed he did not need to comply with the second rule 9.20 order. (*Ibid*.) After receiving a letter from the probation department, the attorney attempted to file his rule 9.20 affidavit, albeit late, but the clerk refused to accept the affidavit.[9]

We considered the attorney's late filing a willful violation of rule 9.20, and his failure to timely file three quarterly reports and two trust account audits willful violations of his probation conditions. (*Rose*, at p. 201.) But, we noted that the attorney's misconduct was mitigated by his recognition of wrongdoing (*id*. at p. 205), his timely compliance with the conditions of his probation for a two-year period prior to the proceedings, which we considered "important steps toward rehabilitation" (*id*. at p. 206), and that his attempt to file his affidavit occurred within two weeks of the due date. (*Id.* at p. 207.) We also gave credit for his efforts on behalf of physically- handicapped persons through pro bono litigation and other activities and for the lack of harm to clients in the rule 9.20 matter. (*Ibid*.) We rejected the notion that respondent's conduct represented a pattern, as the matters did not represent a common thread (*ibid*.), but did find his prior record of discipline in aggravation. (*Ibid*.) Giving consideration to this mitigation, we recommended in the probation matter five years' stayed suspension with two years' actual suspension, and in the rule 9.20 matter two years' suspension stayed, with nine months' actual suspension to run concurrently.

[9]We note that two years later, Rose was disbarred after his fourth disciplinary proceeding in which he was found culpable of violating court-ordered probation conditions. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646.)

Finally, *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, involved a relatively minor violation owing to the filing of a rule 9.20 affidavit two weeks after it was due and before disciplinary action was commenced. The attorney had timely notified his clients of his suspension and otherwise complied with his rule 9.20 obligations. We were "encouraged by his participation in [his] disciplinary matter, his cooperation with the State Bar, and his short delay in his full compliance with all the requirements of rule [9.20]." (*Id*. at p. 535.) Also, he recognized his mistakes, was working on rectifying his misconduct and showed a good faith effort, which were all mitigating factors. (*Id*. at pp. 530-531.) We accordingly recommended "a very modest sanction" of 30 days' actual suspension (*id*. at p. 534), finding that the attorney had "awakened to his responsibilities to the discipline system." (*Id*. at p. 533.)

D. Conclusion

We have scrutinized the cases involving violations of rule 9.20 in our quest to recommend appropriate discipline that would adequately protect the public, giving consideration to a sanction less than disbarment, provided the record disclosed mitigation to justify doing so. (*In the Matter of Babero, supra,* 2 Cal. State Bar Ct. Rptr. at p. 332.) We recognize that respondent's initial involvement with the discipline system arose from misconduct in a single client matter, which did not result in serious discipline. We note too that respondent's subsequent malfeasance in failing to comply with his probation conditions did not result in client harm. However, "[a]ttorneys who engage in this extended practice of inattention to official actions, as respondent did, should not be allowed to create the risk that it will extend to clients resulting in inevitable and grievous harm to them." (*In the Matter of Pierce, supra,* 2 Cal State Bar Ct. Rptr. 382, 388.)

Ultimately, we could find no case imposing a sanction less than disbarment for an attorney who repeatedly has been called to account in disciplinary proceedings for violating conditions of probation, while at the same time violating court orders requiring compliance with rule 9.20. Our observation in *In the Matter of Rose, supra,* 3 Cal. State Bar Ct. Rptr. at p. 649 applies equally here: "Respondent has had ample opportunity to conform his conduct to the ethical requirements of the profession, but has repeatedly failed or refused to do so. Probation

and suspension have proven inadequate to prevent continued misconduct." Furthermore, "respondent's failure to comply with successive orders of the Supreme Court has repeatedly burdened the resources of this court and the State Bar disciplinary system, also a matter of great concern to us. [Citation.]" (*In the Matter of Pierce, supra*, 2 Cal State Bar Ct. Rptr. 382, 388.)

III. DISCIPLINE RECOMMENDATION

For these reasons, we recommend that respondent be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

We also recommend that respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in paragraphs (a) and (c) within 30 and 40 days, respectively, after the effective date of the order imposing discipline in this matter.

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

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Pursuant to the provisions of section 6007, subdivision (c)(4), respondent is ordered enrolled inactive upon personal service of this opinion or three days after service by mail, whichever is earlier.

EPSTEIN, J.

We concur:

REMKE, P. J.

WATAI, J.