PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

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REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **CHARLES HENRY KROHN,** A Member of the State Bar.	)	Case No.: **05-O-02049** **OPINION AND ORDER**

I. INTRODUCTION

Respondent Charles Henry Krohn requests review of a hearing judge's decision recommending that he be disbarred due to his extensive disciplinary record and current misconduct in a single client matter. The hearing judge determined that Krohn failed to competently perform, cooperate with the State Bar investigation, and obey a court order. Krohn asserts that disbarment is excessive and seeks reversal of the culpability findings, contending that the charges are insufficiently proved and time-barred.

Krohn was admitted to practice law in California on December 21, 1977, and has been previously disciplined three times. In sum, during a 16-year period, Krohn was found culpable of 43 ethical violations involving 12 different clients. His present misconduct began in December 1996 and continued through June 2005. We have independently reviewed the record (Cal. Rules of Court, rule 9.12), and find clear and convincing evidence to support all findings of culpability as well as additional charges the hearing judge dismissed. The parties also request various modifications to the factual findings and legal conclusions. To the extent we agree, our

opinion so reflects; otherwise, as more fully discussed below, we accept the factual and culpability findings of the hearing department, as modified, and adopt the recommendation that Krohn be disbarred.

II. DISCUSSION

A. Factual and Procedural Background

Sometime between February and April 1995, Carleen Magadan retained Krohn to represent her in a divorce proceeding. On December 10, 1996, Krohn and Magadan attended a hearing in Los Angeles Superior Court on the issues of child support and other shared expenses. At the conclusion of the hearing, the court granted dissolution of the marriage upon Krohn's completion of a judgment incorporating the court's intended decision. Krohn admits the court ordered him to draft a proposed judgment and submit it to opposing counsel for approval as to form and content. He also concedes that he did not do so.

Krohn testified that he agreed to represent Magadan only until the hearing on December 10, 1996, but he did not execute a retainer agreement reflecting this arrangement. Krohn neither filed a substitution of attorney or formal request to withdraw as attorney of record nor indicated to the court that he would not prepare the judgment as ordered. In determining the scope of Krohn's employment, the hearing judge found Magadan to be more credible than Krohn. Magadan testified that Krohn not only agreed to appear at the December 1996 hearing but also promised to finalize her divorce and child support orders. We adopt Magadan's testimony on this issue.

After the hearing, Krohn told Magadan that he would prepare the necessary paperwork. Magadan called Krohn when she had not heard from him by the end of December 1996, and he advised her that he was still working on her case. Magadan called Krohn several others times, but had trouble reaching him and left messages. The times she was able to talk with him, Krohn

assured her that he was working on her paperwork. Even though Magadan was frustrated by Krohn's prolonged inaction, she did not have the money to hire a new lawyer, and thus, continued to wait for Krohn to conclude her case.

In September 2000, the amount of child support Magadan was receiving increased, leading her to believe that Krohn had finalized her judgment. She therefore did not attempt to contact him again until May 2002 when, without notice, her child support payment decreased significantly. Magadan learned from the District Attorney's office that no judgment incorporating the court's decision of December 10, 1996, had ever been entered. Magadan called Krohn in May 2002 to ask about the paperwork he was to have submitted, but he claimed he could not recall her or her case. To refresh his memory, Magadan sent him documents from her case and a transcript of the hearing they had both attended in December 1996. Krohn did not respond to her May 2002 letter.

Late in 2002, Magadan called Krohn, and told him: "I'm following up again for the case that hasn't been resolved. I sent you the paperwork . . . . [¶] . . . [¶] . . . I've given enough time for review, and I need to know where we are at this point, and I need this case to be closed and resolved. I've been waiting a long time to get this done, and I thought at this point it would have already been taken care of." Krohn advised Magadan that he was preparing for his busy tax season, but would get to her paperwork as soon as things slowed down. Thereafter, Krohn stopped answering his telephone, and did not respond to numerous messages Magadan left for him.

Around mid-2003, Magadan paid another attorney to write a letter to Krohn about her unresolved matter. Krohn did not reply. After retaining another attorney in 2005, Magadan was finally able to conclude her marital dissolution in February 2006 – more than a decade after she

had retained Krohn and almost a decade after the judge had granted the dissolution pending preparation and submission of the final judgment.

As for the charge that Krohn failed to cooperate with the State Bar's investigation, he stipulated during trial that he did not respond to two June 2005 letters from the State Bar that requested a written response to allegations of ethical misconduct based on a complaint received from Magadan.

Because Krohn failed to provide services of value to Magadan and failed to respond to her telephonic and written inquiries, the hearing judge determined that Krohn intentionally, recklessly, and/or repeatedly did not perform competently, in willful violation of rule 3-110(A) of the Rules of Professional Conduct.[1] The hearing judge also concluded that Krohn disobeyed a court order by failing to prepare and submit the proposed judgment in Magadan's case, in willful violation of Business & Professions Code section 6103.[2] Based on Krohn's stipulation, the hearing judge also found that Krohn failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

After the State Bar rested its case-in-chief, the hearing judge granted Krohn's motion to dismiss with prejudice based on insufficient evidence to prove two counts: count two, alleging that he improperly held himself out to Magadan as entitled to practice law; and count three, alleging that he committed an act of moral turpitude by that misrepresentation. The hearing judge erroneously stated in his decision that the State Bar moved to dismiss these counts in the interests of justice. Also, the State Bar erroneously stated in its appellate brief that it dismissed the count alleging moral turpitude in the interests of justice. Our review of the record reveals

[1]All further references to rule(s) are to this source.

[2]All further references to section(s) are to this source.

that no party moved to dismiss any charges in the interests of justice, nor were any dismissed on that basis. As set forth below, we find that the charges were improperly dismissed.

B. Sufficiency of Evidence

After our independent review of the record, we reject Krohn's contention that the State Bar failed to clearly and convincingly prove his culpability. This assertion rests solely on his claim that the scope of his legal services was limited to representing Magadan at the December 1996 hearing. As previously discussed, the hearing judge found Magadan's testimony regarding the extent of Krohn's representation more credible than Krohn's. Under our rules and judicial precedent, "[T]he State Bar Court's findings are viewed with 'great deference, particularly when based on evaluations of credibility.' [Citations.] The hearing [judge] is best suited to resolving credibility questions, because [he or she] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand. [Citation.]" (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 655; Rules Proc. of State Bar, rule 305(a).) We disturb such credibility determinations only after our independent review of the record and reweighing of the evidence presents "a sufficient basis to overturn the hearing judge's findings . . . with respect to the testimonial evidence . . . ." (*In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816, 822.) Such circumstances are not present here.

Furthermore, even if Krohn's representation of Magadan were limited as he described, it in no way absolves him of his failure to comply with the court order requiring him to file a proposed judgment in Magadan's case. For these reasons, we find that the evidence in this record sufficiently establishes Krohn's violations of rule 3-110(A) and section 6103.

C. The Dismissed Charges

The State Bar charged Krohn with willfully violating section 6068, subdivision (a), by improperly holding himself out as entitled to practice law in violation of section 6126, and by

practicing law when he was not entitled in violation of section 6125. At trial, Krohn admitted he was suspended from the practice of law from September 1, 2001, through May 7, 2003, due to non-payment of Bar fees. During this time, he spoke with Magadan about her judgment, and when she made it clear that she wanted to know the status of her case and that it needed "to be closed and resolved," Krohn promised to get her paperwork done as soon as tax season slowed down. Krohn testified that "I know I spoke to her, and I know she said she was going to send me some stuff . . . . [¶] . . . [¶] . . . She called, and I told her that if she wanted to send me something, she could . . . but I wasn't going to look at it, and I wasn't going to do anything until after I had seen her and that I couldn't do anything about that until after tax season in any event."

Krohn admitted that he did not tell Magadan during this conversation that his license was suspended. Because she requested that he resolve her case, Krohn was aware at the time that Magadan believed he was entitled to practice law when he was not. At no time did Krohn advise Magadan that he no longer represented her nor did he discourage her from continuing to expect him to conclude her case. As such, Krohn improperly held himself out as entitled to practice law in violation of section 6126. Therefore, we overturn the hearing judge's dismissal of this count and find that Krohn willfully violated section 6068, subdivision (a).[3]

The State Bar also charged Krohn with violating section 6106 by misrepresenting to Magadan that he was entitled to practice law. Since Krohn knew he was suspended and did nothing to correct Magadan's belief that he was actively practicing and able to work on her matter, his omission constitutes an act of moral turpitude. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91 [an attorney commits an act involving moral

[3]We agree that there is insufficient evidence to establish that Krohn actually practiced law in violation of section 6125; nonetheless, our finding that he improperly held himself out as entitled is sufficient to support the violation of section 6068, subdivision (a).

turpitude if he expressly or impliedly creates or leaves undisturbed the false impression that he has the present or future ability to practice law when in fact he or she is or will be on suspension].) Accordingly, we reverse the hearing judge's dismissal of this count and find that Krohn willfully violated section 6106. However, since identical facts establish Krohn's culpability under sections 6068, subdivision (d), and 6106, the charges are duplicative and we assign no additional weight to the section 6106 violation in determining the appropriate discipline to recommend. (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 175 [where same facts underlie violations of both 6106 and 6068, subdivision (d), no weight given to the section 6106 violation in determining the appropriate discipline].)

D. Statute of Limitations

Krohn also asserts the Notice of Disciplinary Charges (NDC) and the Amended Notice of Disciplinary Charges (Amended NDC) were time-barred pursuant to rule 51 of the Rules of Procedure of the State Bar. This rule requires that "(a) A disciplinary proceeding based solely on a complainant's allegation of a violation of the State Bar Act or Rules of Professional Conduct shall be initiated within five years from the date of the alleged violation. [¶] [A] violation . . . is deemed to have been committed when every element of the alleged violation has occurred, except where the alleged violation is a continuing offense . . . ."

Krohn's argument is unavailing on several grounds. As pled, neither the NDC nor the Amended NDC show that the allowable period of limitation had run. In such a case, "The statute of limitations must be pled as an affirmative defense and respondent bears the burden of proving the facts to show a rule of limitations applies. [Citation.]" (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 9.) Here, Krohn failed to assert the statute of limitations as a defense either in his verified answer to the NDC, his verified answer to the Amended NDC, or his pre-trial statement. Instead, Krohn waited until the State Bar completed its case-in-chief at

trial before ever raising the defense. His failure to timely raise the statute of limitations as a defense in this matter constitutes a waiver. (*Mitchell v. County Sanitation Dist*. (1957) 150 Cal.App.2d 366, 371 [defense of statute of limitations is waived unless raised by demurrer or answer]; *Mysel v. Gross* (1977) 70 Cal.App.3d Supp.10, 15 [statute of limitations must be affirmatively invoked in lower court by appropriate pleading or it is waived].)

Even if Krohn had properly claimed the statute of limitations as a defense, it would not have applied to his failure to cooperate with the State Bar's investigation (to which he stipulated culpability) as the charge is not based solely on allegations from a complaining witness. (Rules Proc. of State Bar, rule 51(a).)

Furthermore, Krohn acknowledged, "At the conclusion of the [hearing he attended with Magadan], the court ordered [him] to prepare a judgment. The judgment was never filed." As a result, we agree with the hearing judge's conclusion that Krohn's failure to ever comply with the court order constitutes a "continuing offense" in violation of section 6103, thereby tolling the statute of limitations with respect to this charge until the "termination of the entire course of conduct." (Rules Proc. of State Bar, rule 51(b).) Since Krohn never complied with the court order, he never terminated the course of conduct upon which the charged violation was based. Thus, the statute of limitations for this allegation of ethical misconduct did not commence until Magadan's new attorney finalized her judgment for divorce in 2006.

If Krohn had not waived his right to assert the statute of limitations as a defense, the charges for which a limitations period were running are count one (failure to perform legal services with competence) and counts two and three (improperly holding himself out as entitled to practice law and misrepresenting his eligibility to practice). During 2002, Krohn failed to correct Magadan's belief that he was entitled to practice law, and Krohn's most recent act supporting a finding that he failed to competently perform occurred in mid-2003 when he did not

respond to Magadan's letter inquiring about her case status. This is also the point in time when Magadan believed her attorney-client relationship with Krohn had effectively ended. The State Bar charged Krohn's failure to perform and improper misrepresentation as to his entitlement to practice law in the NDC filed on September 15, 2005, well within the five-year limitations period. (See, e.g., *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 378 [filing date of NDC used to determine whether limitations period lapsed].)

E. Factors in Aggravation and Mitigation

1. Aggravation

a. Prior Record of Discipline

Krohn's extensive prior record of discipline is a significant aggravating factor. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)[4] In 1994, Krohn received a two-year stayed suspension with a two-year probation on conditions that included a 60-day actual suspension for misconduct occurring between May 1990 and July 1993 relating to his representation of six clients. Krohn failed to communicate with his clients in all six matters, failed to competently perform in five cases, failed to cooperate with the State Bar's investigation in four matters, improperly withdrew from employment in two cases, and failed to comply with a court order. These multiple acts of misconduct caused significant client harm.

In 1996, Krohn received a three-year stayed suspension with a 42-month probation on conditions including a four-month actual suspension that continued until Krohn paid specified restitution and provided evidence that his medical condition did not render him unfit to practice law. Krohn was disciplined for misconduct occurring between December 1989 and May 1993 in five client matters as well as violations of his disciplinary probation between January and April 1995. With respect to the client matters, Krohn failed to competently perform in each, failed to

[4]All further references to standards are to this source.

communicate in three matters, failed to cooperate with the State Bar's investigation in four cases, failed to return unearned fees, failed to return a client file, failed to comply with a court order, and failed to report judicial sanctions. Krohn's multiple acts of misconduct and prior record of discipline were tempered by the fact that medications he took for a respiratory problem exacerbated his attention deficit disorder.

In 2000, Krohn received a four-year stayed suspension with a three-year probation on conditions that included an 18-month actual suspension for failing to competently perform in a single client matter, failing to comply with the State Bar's investigation, and failing to comply with the probation conditions imposed in Krohn's second disciplinary proceeding. His failure to competently perform occurred between February and December 1993. His failure to cooperate occurred in March 1994, and his probation violations occurred between March 1996 and April 1997. Krohn's misconduct was aggravated by his prior record of discipline, multiple acts of misconduct, and indifference toward rectification. In mitigation, Krohn had participated in community activities and, between 1989 and the fall of 1995, had suffered from a chronic medical condition involving steroid psychosis and attention deficit disorder (ADD) that his doctor certified was cured in the fall of 1995.

b. Pattern of Misconduct

Although Krohn committed multiple acts of misconduct in the current proceeding, such acts occurred only in a single client matter. Thus, we do not agree with the hearing judge that "the *current misconduct* found or acknowledged by [respondent] . . . demonstrates a pattern of misconduct" under standard 1.2(b)(ii). (Italics added; see, e.g., *Cannon v. State Bar* (1990) 51 Cal.3d 1103, 1115 [attorney's failure to competently perform in two client matters deemed insufficient to demonstrate "pattern of similar conduct" under standard 2.4(a)].)

However, a pattern of misconduct can be found independent of standard 1.2(b)(ii) where an attorney's present misconduct viewed in conjunction with a prior record of discipline shows recurring types of wrongdoing that depict a continuous course of conduct over an extended period of time. (See *Garlow v. State Bar* (1988) 44 Cal.3d 689, 711 [attorney's four prior incidents of discipline involving repeated misrepresentations, failure to communicate with clients and failure to competently perform combined with present misconduct that included, inter alia, failing to communicate with a client, failing to competently perform and testifying falsely, "evidences a serious pattern of misconduct involving recurring types of wrongdoing"].)

Furthermore, a "pattern of professional misconduct" has been found when the current misconduct was only the second time the attorney committed the same ethical violation. (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 607.) In *Morgan,* the attorney had been disciplined on five separate occasions for misconduct spanning a period of 22 years. (*Id.* at pp. 601-602.) The attorney was initially disciplined in 1962 for misappropriating client funds. Thereafter, he was disciplined in 1963 for engaging in the unauthorized practice of law, in 1966 for settling client cases without authority and misappropriation of client funds, in 1984 for again misappropriating client funds and in 1986 for failing to communicate and failing to competently perform. (*Id*. at p. 601.) In the most recent proceeding, the attorney was found culpable of obtaining a pecuniary interest adverse to his client and engaging in the unauthorized practice of law. In determining that the attorney should be disbarred, the Supreme Court stated "petitioner's behavior demonstrates a pattern of professional misconduct . . . this is the *second* time that petitioner has been found culpable of practicing law while under suspension." (*Id*. at p. 607.)

As in *Morgan*, Krohn's current ethical lapses demonstrate a disturbing pattern of professional misconduct when considered in conjunction with his prior record of discipline. Krohn's contention that his "present misconduct overlaps the same period of misconduct for

which [he] has already received discipline" is without merit. From 1989 through 1994, Krohn either failed to communicate with, failed to competently perform legal services for, or abandoned twelve clients. In all three prior discipline records, he failed to cooperate with the State Bar's investigations. By the end of 1996, Krohn began to repeat this pattern of misconduct by failing to competently perform for Magadan and failing to cooperate with the State Bar's investigation of Magadan's complaint in 2005. In addition, Krohn was culpable of failing to comply with court orders in two of his prior discipline matters, and has committed the same violation again in this matter. We find that Krohn's present ethical lapses viewed together with his prior record of discipline depict a continuing course of similar misconduct over a 16-year period that is sufficient to establish a pattern of professional misconduct.

c. Bad Faith

We do not agree with the hearing judge's finding that because Krohn misled Magadan regarding his status as an attorney, his misconduct was therefore surrounded by or followed by bad faith. (Std. 1.2(b)(iii).) The finding that Krohn misled Magadan regarding his status as an attorney underlies the section 6106 violation. To find additional aggravation on the basis of this same fact is duplicative.

d. Significant Client Harm

We agree with the hearing judge's finding that Krohn's misconduct caused Magadan significant harm due to the nearly decade-long wait she was forced to endure before her marital dissolution was finalized, causing her personal and financial harm.

2. Mitigation

a. Physical Disability

Although the hearing judge concluded that Krohn suffered from ADD in 1996 and that he was finally able to get it under medical control in 2000, we decline to afford this medical

condition any weight in mitigation because Krohn failed to provide expert testimony establishing that his ADD was directly responsible for his misconduct and that it no longer affects his practice of law. (Std. 1.2(e)(iv); *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 158-159 [although attorney was undergoing therapy to save his marriage, it was not relevant in mitigation because he neither established by expert testimony any psychological problems at time of misconduct nor demonstrated recovery]; *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct Rptr. 416, 443 [where attorney suffered from emotional divorce as well as torticollis, dysphonia, and Parkinson's disease, such circumstances were not mitigating since attorney not only failed to establish with expert testimony that his depression and physical maladies were directly responsible for his misconduct but also failed to establish that he no longer suffered from those emotional difficulties and disabilities].) According to the stipulation filed in Krohn's third disciplinary proceeding, he rectified his steroid psychosis and ADD by the end of 1995. Even if we were to agree with the hearing judge that Krohn continued to suffer from ADD until 2000, this still predates by almost two years Krohn's failure to respond to Magadan's client inquiries and by almost five years his failure to cooperate with the State Bar's investigation of Magadan's complaint.

b. Emotional Difficulties

Similarly, we also decline to afford Krohn's emotional difficulties any mitigating weight because he failed to establish through expert testimony how the death of his mother or a former client was directly responsible for his misconduct or that Krohn no longer suffers from the asserted emotional problems. (Std. 1.2(e)(iv); *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993 [attorney not entitled to mitigation for emotional difficulties since no expert evidence existed to establish causal connection between attorney's anxiety disorder and misconduct at issue].)

c. Volunteer Activities

Although the hearing judge recognized Krohn's pro bono work in the community based on Krohn's own testimony, no witnesses or documentary evidence were presented to corroborate those activities. Furthermore, even though he testified that he participated in several community organizations for multiple years, the exact nature and extent of such participation remains unclear on this record. For these reasons, we afford only nominal weight to Krohn's pro bono activities. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840; *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287.)

F. Level of Discipline

In determining the degree of discipline to recommend, we consider the standards, which serve as guidelines, as well as prior decisions imposing discipline based on similar facts. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) On this record, several standards would require Krohn's suspension or disbarment. (See stds. 1.7(b), 2.3 and 2.6.) Since the standards are recognized as guidelines, however, it is not mandatory for us to recommend suspension or disbarment. Instead, we first review the analysis of the hearing judge as well as relevant case law for additional guidance in order to best achieve the purpose of disciplinary proceedings, which is to protect the public, preserve public confidence in the profession, and maintain the highest possible standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

We find that standard 1.7(b) is the most pertinent to the disciplinary analysis in this case. If an attorney has a record of two prior impositions of discipline, standard 1.7(b) provides for "disbarment unless the most compelling mitigating circumstances clearly predominate." As previously discussed, Krohn's current misconduct is aggravated by an extensive record of three prior impositions of discipline, tempered only by the nominal weight we have given Krohn's pro

bono community activities. "When there is a repetition of offenses for which an attorney has previously been disciplined that 'demonstrates a pattern of professional misconduct,' the Supreme Court and this court have found disbarment appropriate under standard 1.7(b). [Citations.]" (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 977.)

We concur with the finding of the hearing judge that Krohn's repetition of misconduct over a prolonged duration suggests that he is either unwilling or unable to conform his behavior to the rules of professional conduct and raises grave concern that he will commit future wrongdoing. This is Krohn's fourth time in the discipline process. His misconduct spreads over 16 years and involves 13 clients. He has been found culpable of violating the conditions of his probation on two separate occasions, and has failed to cooperate with the State Bar in all four matters. Krohn's repeated encounters with attorney discipline have neither rehabilitated him nor deterred him from committing further misconduct.

We rely on *Barnum v. State Bar* (1990) 52 Cal.3d 104 in deciding the appropriate discipline to recommend. In *Barnum*, the attorney was culpable of misconduct in a single client matter and had been disciplined twice before, once for misconduct similar to that of the current proceeding and another time for violating conditions of his probation. (*Id*. at pp. 106-107.) The Supreme Court determined that the attorney's failure to cooperate with the State Bar's investigation was not aberrational. (*Id*. at p. 112.) Although the attorney blamed his misconduct on clinical depression and a poor emotional state, the court found no mitigating circumstances because "[a]bsent some sort of reliable extrinsic evidence, [the court had] no facts with which to assess the extent and nature of any alleged mental condition, or the success of any alleged rehabilitative efforts." (*Id*. at pp. 112-113.) The court determined that the attorney was not a

good candidate for suspension or probation, and after considering the risk of exposing the public to additional harm, the court disbarred the attorney on grounds consistent with the standards.

As was the case in *Barnum*, Krohn's prior misconduct involves probation violations as well as misdeeds similar to those in the current proceeding, his repeated failure to cooperate with the State Bar is not aberrational, he failed to provide extrinsic evidence of his alleged mental or emotional condition or any alleged rehabilitation, and he poses a risk of committing additional misconduct. Finding no compelling mitigation to warrant deviating from applying standard 1.7(b), and finding the risk of future misconduct great, we adopt the hearing judge's recommendation of disbarment. (See also *Morgan v. State Bar*, *supra*, 51 Cal.3d at pp. 607-608 [attorney's character evidence and community service did not constitute compelling mitigating circumstances and standard 1.7(b) was applied to disbar attorney whose behavior demonstrated a pattern of professional misconduct].)

III. RECOMMENDATION

We therefore recommend that respondent Charles Henry Krohn be disbarred from the practice of law in this state and that his name be stricken from the roll of attorneys licensed to practice. We further recommend that he be ordered to comply with the provisions of rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order in this matter. We further recommend that the State Bar be awarded costs in accordance with Business and Professions Code section 6086.10 that are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

IV. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, he properly ordered that respondent be involuntarily enrolled as an inactive member of the State Bar as required by section 6007,

subdivision (c)(4), and Rules of Procedure of the State Bar, rule 220(c). The hearing judge's order of involuntary inactive enrollment became effective on July 1, 2007, and respondent has remained on involuntary inactive enrollment since that time. In light of our disbarment recommendation, it is hereby ordered that Charles Henry Krohn remain on involuntary inactive enrollment pending the final disposition of this proceeding.

REMKE, P. J.

WE CONCUR:

WATAI, J.

STOVITZ, J.[5]

[5]Honorable Ronald W. Stovitz, retired Presiding Judge of the State Bar Court, sitting by designation of the Presiding Judge.