**PUBLIC MATTER – DESIGNATED FOR PUBLICATION**

Filed November 17, 2009

**REVIEW DEPARTMENT OF THE STATE BAR COURT**

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| In the Matter of<br><br>**JOHN WILLIAM ELKINS**<br><br>A Member of the State Bar. | **No. 05-O-03819**<br><br>**OPINION ON REVIEW** |

After respondent, John William Elkins, was removed as co-executor of his father's estate (the "estate"), he sent 53 threatening and abusive voicemail messages to the successor administrator of the estate, the attorney for the administrator, and the ex officio judge of the Forsyth County Superior Court of North Carolina (the "Superior Court"), who was responsible for overseeing the estate. As a result, Elkins is charged with acts of moral turpitude in violation of Business and Professions Code section 6106.[1] He is also charged with violating: Rules of Professional Conduct, rule 5-100(A)[2] for threatening to report these individuals to various state and federal agencies to gain an advantage in a civil dispute; section 6068, subdivision (b) for showing disrespect to the ex officio judge and accusing him of taking a bribe; and section 6068, subdivision (j) for failing to update his membership address with the State Bar.

The hearing judge found Elkins culpable of all of the alleged violations and recommended that he be suspended from the practice of law for two years, stayed, and placed on

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

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

probation with a 90-day period of actual suspension. Elkins seeks review, arguing that his conduct does not involve moral turpitude, that his communications are protected by the First Amendment, and that he should not be subject to discipline because he was acting in a personal, not a professional, capacity at the time of the alleged misconduct. The State Bar asks us to affirm the culpability findings and discipline recommendations of the hearing judge.

Based upon our de novo review of the record (*In re Morse* (1995) 11 Cal.4th 184, 207), as well as the standards[3] and guiding case law, we adopt the hearing judge's culpability determinations, and his discipline recommendation, which we find is sufficient to protect the public, the courts and the legal profession.

## I. JURISDICTION

At the outset, we address Elkins' jurisdictional challenge to these proceedings. He was admitted to the practice of law in California on February 14, 1980. Elkins challenges our jurisdiction on the grounds of undue delay by the hearing judge, who filed his decision one year after the conclusion of a four-day trial and ten months after the matter was submitted. Elkins asserts this delay is proscribed by Rules of Procedure of the State Bar, rule 220(b) (rule 220(b)), which provides: "The Court shall file its decision within ninety (90) days of taking the matter under submission . . . ." Elkins also asserts that the hearing judge's delay resulted in substantial prejudice because he has not practiced law since 2005 out of concern that these proceedings "might cause problems with respect to potential client matters."

In *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231, 246, we held that "the 90-day time limit in rule 220(b) is neither mandatory nor jurisdictional, but directory." Nevertheless, we acknowledge Elkins' frustration and his desire for an expeditious determination in this matter. Indeed, the 90-day time limit for filing decisions under rule 220(b)

[3] All further references to "standard(s)" are to Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

is the legislative recognition of the fundamental axiom "that justice delayed is justice denied and the unmistakable requirement that the judiciary now take active management and control of cases, from start to finish, for speedy dispute resolution [Citation.]." (*Laborers' Internat. Union of North America v. El Dorado Landscape Co*. (1989) 208 Cal.App.3d 993, 1007 [justice-delayed axiom underlies Trial Court Delay Reduction Act of 1986 (Gov. Code, § 68600 et seq.]; *Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1199 [justice-delayed axiom reflected in trial-setting preference in Code Civ. Proc. § 36].)

Rule 220(b) serves a dual purpose in disciplinary proceedings: (1) if no culpability is found, a decision within the 90-day time limit allows the member to clear his name as quickly as possible; and (2) if culpability *is* found, the public is assured of the necessary and timely protection to which it is entitled under the State Bar disciplinary process. In this case, the filing of the decision well beyond the prescribed 90 days undermines these important objectives. Nevertheless, the rule is not jurisdictional and Elkins' decision to abate his practice out of concern that these disciplinary proceedings "might" cause problems for "potential" clients is too speculative to establish specific, legally cognizable prejudice. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.) We thus find Elkins' jurisdictional challenge to be without merit.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Factual and Procedural Background

Elkins and his brother were appointed co-executors of their father's estate by order of the Superior Court on August 27, 2002. The principal asset of the estate was their father's home in North Carolina. At the time his father died, Elkins was residing in this home to care for his father.

In July 2004, Margaret Lortie, Assistant Clerk of the Superior Court, sent letters to Elkins and his brother indicating that they had failed to file a satisfactory accounting. A few weeks later, Brice Murphy, another Assistant Clerk of the Superior Court and an ex officio judge, served an order on Elkins directing him to file an accounting because the previous accountings were unsatisfactory. Elkins responded by asking for clarification as to how the accountings were unacceptable, and Murphy sent another letter to Elkins outlining the flaws. Once again, Elkins wrote to Murphy, asking for further clarification of the deficiencies. In response, Murphy served Elkins with an Order to Show Cause for Failure to File Inventory/Account (OSC), with a hearing date set for October 12, 2004. Elkins sought a continuance of the OSC hearing, which Murphy denied. While all of this was happening, Elkins also was embroiled in litigation with Household Mortgage Financial Services (the "mortgage company"), having sued it for a usurious mortgage that he alleged had been fraudulently negotiated with his father prior to his death.

Between August and September 2004, Elkins left five lengthy messages on Murphy's voicemail, expressing his displeasure with the court. He was convinced that the clerk's office was "up to no good at this point involving graft and corruption." Elkins stated: "[S]omebody in your office, I think, is playing games with this estate and is trying to get rich off of it through the mortgage company. That's what I'm charging at this point because it's circumstantial based on the timing. Now, I suspect you better back off."[4] Elkins informed Murphy: "I'm going to the FBI on you people if you don't back off now." He also warned: "I'm going to make a complaint against you to the commission on judicial performance and good luck fellow. You've exceeded your authority. You've abused your discretion." To underscore the seriousness of his intentions, Elkins advised Murphy that he has been "an attorney for twenty five years" and therefore Murphy should not take his accusations "lightly or irrationally."

[4] Elkins made numerous threats and accusations in his phone messages to Murphy. We have limited our account of the messages to a few representative examples.

Murphy felt threatened by these phone calls and feared for his personal safety. He accordingly asked two bailiffs to be present at the OSC hearing. At the hearing, Murphy ordered Elkins and his brother to file an acceptable accounting within 30 days of receipt of a forthcoming clerk's letter outlining the defects to be remedied. After they failed to comply with this order, Assistant Clerk Lortie, acting as an ex officio judge of probate, ordered Elkins and his brother removed as co-executors and appointed attorney Gregory D. Henshaw to succeed them as a public administrator for the estate. The Superior Court affirmed the order on May 3, 2005.

Three weeks later, on May 24, 2005, Henshaw wrote Elkins a brief letter introducing himself as the public administrator of the estate and advising that, based on his review of the assets, "it appears it may be necessary to sell [his father's home] to pay the debts of the estate." Henshaw further wrote that he would be "more than happy to work with you to arrange full payment of [the estate's] obligations . . . if you can pay the outstanding estate debts, there will be no reason to proceed with selling the real property." Since the estate had been pending for almost three years, Henshaw asked Elkins to "[p]lease contact me to discuss this matter by June 10, 2005. . . . I will gladly discuss your options in the matter with you upon your contacting my office."

In response, Elkins called Henshaw, but, according to Henshaw, the conversation "deteriorated so quickly with the way he was speaking to me" that Henshaw terminated the call. Elkins eventually realized that Henshaw had purposely hung up the phone, which infuriated him. Unable to reach Henshaw by phone, Elkins left 21 messages on his voicemail during one week from May 26, 2005 through June 1, 2005. In the messages, Elkins referred to Henshaw, Murphy, and Lortie as "white trash" and "slime liars," and he repeatedly accused Henshaw of conspiring with Lortie and Murphy to accept a bribe from the mortgage company. Elkins made these

accusations without any direct knowledge or investigation, based on what he repeatedly characterized as "circumstantial evidence."

Elkins then threatened Henshaw:

> [B]uddy boy, you make one more move other than to resign whatever it is you've supposedly been appointed to and I'm going to report your behavior to the State Bar, I'm going to the State Attorney General's Office on you, on Margaret Lortie, on Bryce Murphy. . . .And I will go to the FBI on you too, because I think you're in cahoots, I think you've been taken a bribe. That's what I decided.

Elkins also repeatedly warned Henshaw not to "mess" with him, and to back up his threats, he reminded Henshaw that Elkins had been practicing law in California for 25 years.

Henshaw retained William Walker, a partner in his law firm, to act as his attorney in the estate proceedings. Walker then sent Elkins a brief e-mail on June 2, 2005, informing him that his multiple messages had been recorded and transcribed and that they had clogged Henshaw's voicemail, preventing other callers from reaching him. Walker admonished Elkins to stop calling Henshaw or anyone else in his office and to communicate only in writing.

Incensed, Elkins left 19 messages on Walker's voicemail on the same day he received Walker's e-mail, railing against everyone involved in the administration of the estate. He advised Walker, "I can and I will [go] to the State Attorney General and the FBI at some point. So I'd advise you to back off. . .I just said you better watch your step. . . .Because I'm watching you." Elkins also left eight messages for Henshaw on the same day, in spite of Walker's admonishment not to call him. In fact, these messages were even more harassing, demeaning and offensive than the earlier ones.[5] Elkins followed up the next day by sending Walker an e-mail asserting his right to communicate with Henshaw in any manner he deemed "expedient."

[5] For example, he said: "Kid, as long as you've got a fiduciary relationship to me, which you do, you've got to talk to me, whether you like it or not, you little bullshit artist, and I'll fuck you anyway I want to until you do." (We have limited our account of Elkins' messages to Henshaw and Walker to a few representative examples.)

Faced with these harassing communications, Walker sought a restraining order against Elkins and clarification from the Superior Court regarding Henshaw's authority to act as the administrator of the estate. On June 27, 2005, the Superior Court made the following findings in support of the restraining order: (1) Elkins "repeatedly makes statements that could be interpreted as threats to and attempted intimidation of Henshaw and his office staff;" (2) his statements had a tendency to "impede and harass Henshaw, his staff, and his attorney in the performance of Henshaw's duties as estate representative;" (3) his statements had a tendency to "obstruct Henshaw in the performance of his duties;" and (4) Elkins offered no evidence to support his "outrageous accusation" that the clerk who supervised the estate took bribes.

The court ordered Elkins to communicate only in writing with Henshaw, Walker, and their staff, not to enter their office premises and not to intentionally come within 100 feet of them except at court hearings. The court also confirmed Henshaw as the sole administrator of the estate. Elkins ceased making telephone calls after issuance of this order.

**Count 1: Acts Involving Moral Turpitude [§ 6106]**

Elkins is charged with committing acts of moral turpitude in violation of section 6106[6] for sending numerous threatening voicemail messages to Henshaw and Walker. In assessing whether Elkins' conduct constitutes moral turpitude, we utilize a "commonsense" approach (*In re Mostman* (1989) 47 Cal.3d 725, 738). Based on the record and guiding precedent, we conclude that Elkins' conduct indeed involved moral turpitude. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 147 [numerous phone calls to client resulting in harassment and intentional infliction of emotional distress constituted acts of moral turpitude]; *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88 [harassing telephone

[6] Section 6106 proscribes conduct "involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise . . . ."

call to juror threatening to report absence from jury duty to juror's employer constituted moral turpitude].) The telephone messages can only be viewed as intentionally harassing, given the sheer number of calls Elkins made in a relatively short time period, and his repeated warnings that Henshaw should not "mess" with him or Henshaw would "regret it." Elkins also told Walker to "watch his step" because he would "regret it the rest of [his] life." The fact that Elkins made these threats in his private rather than his professional capacity does not affect our determination since section 6106 by its express language applies to acts of moral turpitude whether or not committed in the course of practicing law. In actuality, Elkins used his status as a California attorney to leverage his threats.

Of particular concern are the facts that Elkins' telephone tirades caused Henshaw and Walker to suffer fear and were triggered by two relatively harmless events: (1) Henshaw's unwillingness to contact Elkins by phone after their first, aborted telephone conversation; and (2) Henshaw's May 24, 2005 letter, advising Elkins of Henshaw's appointment as representative and asking him to discuss arrangements to pay the estate's debts. Walker felt it was necessary to call the sheriff about Elkins' threats out of concern for his personal safety and that of his office staff. Similarly, Henshaw testified that Elkins' condescending and strident tone of voice, as well as his ugly and foul language, and the number of messages, caused him to be concerned for his personal safety and for his professional standing.

Elkins incorrectly asserts that his voicemail messages are protected by the First Amendment to the U. S. Constitution, and therefore he cannot be disciplined under section 6106. First, regardless of the *content* of the messages, the mere act of making 53 phone calls in a short time period constitutes harassing *conduct* that is not protected by the First Amendment. (*Roberts v. United States Jaycees* (1984) 468 U.S. 609, 628 [104 S.Ct. 3244] ["[V]iolence or other types of potentially expressive activities that produce special harms distinct from their communicative

impact . . . are entitled to no constitutional protection [Citation.]"].) Moreover, the intimidating voicemail messages, which caused three individuals to fear for their physical safety, are not entitled to First Amendment protection. (*Virginia v. Black* (2003) 538 U.S. 343, 359-360 [123 S.Ct. 1536, 1547-1548]; *In re M.S., a Minor* (1995) 10 Cal.4th 698, 720.)[7]

**Count 2: Threats to Gain Advantage in a Civil Dispute [Rule 5-100(A)]**

Rule 5-100(A) provides that "[a] member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute." Elkins violated this rule when he threatened to report Henshaw and Walker to the FBI, a city councilman, the State Attorney General and others if they did not comply with his various demands regarding the estate and his litigation with the mortgage company. (*In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627, 637.)

We reject Elkins' argument that rule 5-100(A) does not apply to his conduct because he was acting in a private capacity, not as an attorney, when he left his messages. The Rules of Professional Conduct do not "apply only to lawyers who are acting in their role as advocates for others." (*Davis v. State Bar* (1983) 33 Cal.3d 231, 240 [applying former rule 7-105 regarding misrepresentations made to court to attorney's misconduct while representing himself in malpractice action]; *In the Matter of Malek-Yonan, supra,* 4 Cal. State Bar Ct. Rptr. at p. 637 [applying rule 5-100(A) to attorney representing herself in collections dispute].) However, in finding culpability, we assess no additional weight for discipline purposes since we relied on these same persistent threats to establish Elkins' culpability for violating section 6106 under Count 1.

[7] We reject Elkins' contention that section 6106 is unconstitutionally vague or overbroad, noting that challenges on these grounds have been previously considered and rejected. (See, e.g., *Canatella v. Stovitz* (N.D. Cal. 2005) 365 F.Supp.2d 1064, 1074-1076.)

**Count 3: Disrespect of Courts and Judicial Officer [§ 6068, subd. (b)]**

Section 6068, subdivision (b) requires an attorney to maintain the respect due the courts of justice and judicial officers. Elkins is culpable of violating this rule by repeatedly and falsely accusing Murphy, who was both a clerk and an ex officio judge in probate matters, of taking bribes. He also threatened to report Murphy to the State Attorney General, the FBI and the commission on judicial performance. As a result of these phone calls, Murphy was so fearful for his safety that he enlisted two deputies to attend the OSC hearing when Elkins was present.

Elkins again argues that the First Amendment protects his statements maligning Murphy's honesty and integrity. He is wrong. Elkins admits he had no direct evidence that Murphy took a bribe, nor did he conduct any investigation. Thus, his statements were based on nothing more than mere conjecture and are subject to discipline because Elkins made them with reckless disregard of their truth or falsity. (*In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 782-783 [no constitutional protection for false statements made with knowledge they are false or made with reckless disregard of truth "because there is no constitutional value in such false statements of fact"].) In addition, the State Bar established the falsity of the accusations by the uncontradicted testimony of Murphy that he did not take bribes, which was corroborated by the findings of the Superior Court in support of its restraining order. The false charges of bribery were sufficiently serious to constitute a violation of section 6068, subdivision (b), for which Elkins may be disciplined. (*Ramirez v. State Bar* (1980) 28 Cal.3d 402, 410-412.)

**Count 4: Failure to Update Membership Address [§ 6068, subd. (j)]**

Neither party challenges the hearing judge's finding that Elkins failed to notify the State Bar of his current address within 30 days after he abandoned the address on file in the official membership records of the State Bar in willful violation of section 6068, subdivision (j). Upon

our independent view of the record, we adopt the hearing judge's findings of fact and conclusions of law that Elkins is culpable of violating section 6068, subdivision (j).

## III. DISCIPLINE DISCUSSION

The primary purpose of these disciplinary proceedings is not to punish but to protect the public, the courts, and the legal profession. (Std. 1.3; *Bach v. State Bar* (1987) 43 Cal.3d 848, 856-857.) In determining the appropriate degree of discipline, we consider the unique facts of this case as well as any mitigating and aggravating circumstances.

### A. Mitigation

Elkins' 24 years of practice without discipline are entitled to significant mitigation. (Std. 1.2(e)(i).)

He is not entitled to mitigation for good character under standard 1.2(e)(vi) because he had only one witness testify, which does not constitute a broad range of references from the legal and general communities. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [respondent not entitled to mitigation for good character based on testimony of two witnesses].)

Additionally, Elkins claims mitigation for the extreme emotional difficulties he suffered as a result of his father's death and the prospective loss of the family home. While we acknowledge his plight, we afford him no mitigative credit because he failed to establish a causal nexus between those emotional difficulties and his misconduct. (*In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267, 277 [death of parent and break-up of marriage given no weight in mitigation without additional evidence of causal connection between psychological distress and misconduct].) We note that the harassing calls to Murphy began in August of 2004, two years after Elkins' father died. He then committed the same misconduct against Henshaw and Walker eight months later, in May of 2005, and his harassment

increased in frequency and in degree of abusiveness. During this significant time period, he had the opportunity to gain perspective and to reflect on the inappropriateness of his misconduct.

Elkins also argues that he caused no harm to the victims of his misconduct. (Std. 1.2(e)(iii).) We disagree. Murphy, Walker and Henshaw testified that they felt threatened and concerned for their own safety as well as the safety of their employees. Walker and Henshaw felt compelled to obtain a stay-away protective order from the court.

Elkins further asserts that he is entitled to mitigation under standard 1.2(e)(v) due to his cooperation and participation in these proceedings. His participation is required by section 6068, subdivision (i), and he did not present clear and convincing evidence of cooperation deserving of mitigative credit.

**B. Aggravation**

We find three factors in aggravation. First, Elkins' multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) Second, his misconduct significantly harmed the administration of justice by imposing a burden on the Superior Court to ensure the proper supervision of the estate and the protection of those involved in representing the estate. (Std. 1.2(b)(iv).) Third, Elkins lacks insight into the wrongfulness of his actions and the extent of his misconduct. He continues to perceive that he is the victim rather than Murphy, Walker and Henshaw, all of whom were the targets of his incessant, harassing messages. (Std. 1.2(b)(v).)

**C. Level of Discipline**

In assessing the level of discipline, we look to the standards, which serve as guidelines. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) Because Elkins is culpable of acts of moral turpitude and violations of rule 5-100(A) and section 6068,

subdivisions (b) and (j), the applicable standards are 2.3 and 2.6.[8] Both provide for suspension or disbarment depending on the gravity of the misconduct or harm to the victim.

We also look to prior disciplinary decisions for guidance, noting that those cases involving assaultive behavior have resulted in a range of actual suspension from 30 days to one year.[9] We find the most relevant decisions concern attorneys who harassed other individuals in order to gain an advantage, but whose actions did not entail dishonesty. In *In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. 138, 153, an attorney created "an atmosphere of fright and terror" by harassing his client with 100 late-night phone calls over a nine-month period. The calls had dire effects on the client. She became unstable, lost her job as an office manager, and was unable to work except as a part-time clerk. Torres was found culpable of moral turpitude for making the harassing phone calls, which was aggravated by his deliberately false and evasive testimony. Because of "the depravity of this misconduct in its relation to the legal profession" and the fact that Torres turned on his own client, we considered disbarment. (*Id*. at p. 151.) But, instead, we recommended three years' actual suspension because Torres terminated his conduct promptly when his client's new attorney contacted him. (*Id*. at p. 153.) In the

[8] Standard 2.3 provides: Culpability of a member for an act of moral turpitude "toward a court, client or another person . . . shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed . . . and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law." Standard 2.6 states that culpability for a violation of section 6068 "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3 . . . ."

[9] See, e.g., *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406 [two years' stayed suspension for conviction for assault with firearm causing great bodily injury to another person]; *In the Matter of* Stewart (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52 [60 days' actual suspension for assault on police officer, with prior record of discipline]; *In re Hickey* (1990) 50 Cal.3d 57 [30 days' actual suspension for repeated acts of assault toward wife and others coupled with failure to properly withdraw from legal representation in another matter, no prior record, conduct arose from alcohol abuse]; *In re Larkin* (1989) 48 Cal.3d 236 [one-year actual suspension for attorney convicted of assault with deadly weapon and conspiracy to commit it, strong mitigation including no prior record]; *In re Otto* (1989) 48 Cal.3d 970 [six months' actual suspension for felony conviction for serious assault and corporal injury on co-habitant of opposite sex].

instant case, the level of harassment did not approach the seriousness of that in the *Torres* case. Moreover, Elkins did not engage in overreaching of a helpless client.

We further consider *Sorensen v. State Bar* (1991) 52 Cal.3d 1036, where an attorney was suspended for 30 days because he sued a court reporter for fraud and deceit, seeking $14,000 in punitive damages, over a simple $45 billing dispute. The court reporter incurred $4,375 in legal fees and expenses. The Supreme Court found Sorensen "was motivated in large measure by spite and vindictiveness, and he acted on those base impulses by selecting the most oppressive and financially taxing means of redress, out of all proportion to the minor sum and rather innocuous incident in controversy." (*Id*. at p. 1042.) The Court thus focused on the disproportionate and malicious response as evidence of the attorney's spiteful motive. (*Id*. at pp. 1042-1043.) We find that, like Sorenson, Elkins' phone vendetta was completely out of proportion to the incidents that precipitated his ire. As a practicing attorney, Elkins was aware of and should have used accepted legal procedures to address his frustration with Henshaw, Walker and the court, which was administering the estate.

We also take into account the bribery accusations Elkins aimed at Murphy. Such conduct alone is worthy of a 30-day actual suspension. (*Ramirez v. State Bar*, *supra*, 28 Cal.3d 402, 404-405 [30-day actual suspension for attorney who falsely accused Ninth Circuit judges of acting "unlawfully" and "illegally" and becoming "parties to the theft" of property of attorney's clients].)

To his credit, Elkins has 24 years of discipline-free practice without a record of abusive conduct, and he now recognizes that he got "carried away" with the situation. Moreover, his behavior did not involve physical injury to another. We further observe that when faced with the Superior Court's order, he ceased his telephone harassment of the three individuals. But, by any measure, his conduct is "unacceptable from anyone in society and particularly reprehensible

from an attorney." (*In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543, 550.) Thus, we conclude that the hearing judge's recommended discipline, including the 90-day actual suspension, is appropriate.

## IV. RECOMMENDATION

We recommend that JOHN WILLIAM ELKINS be suspended from the practice of law in the State of California for two years, that execution of that period of suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for the first 90 days of probation;

2. During the period of probation, he must comply with the State Bar Act and the Rules of Professional Conduct;

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office of the State Bar and the State Bar's Office of Probation;

4. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the State Bar Office of Probation which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;

6. Within one year of the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201).

7. His probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he

has complied with all conditions of probation, the period of stayed suspension will be satisfied, and that suspension will be terminated.

**PROFESSIONAL RESPONSIBILITY EXAMINATION**

We further recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners 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 Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

**RULE 9.20**

We further recommend that John William Elkins be ordered to comply with rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, from the effective date of the Supreme Court order. Failure to do so may result in disbarment or suspension.

**COSTS**

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

EPSTEIN, J.

We concur:

REMKE, P. J.

PURCELL, J.