PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED
OCT 16 2009
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of	)	No. 05-O-04575
	)	
BARRY M. ORLYN,	)	**OPINION ON REVIEW**
	)	
A Member of the State Bar.	)	
	)	

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I. SUMMARY

Respondent, Barry M. Orlyn, mishandled and misappropriated his client's $9,000 civil judgment when he deposited it into his general account without the client's permission and then used it to satisfy the client's outstanding legal fees. As a result, the Office of the Chief Trial Counsel of the State Bar (State Bar) charged Orlyn with four violations of the Rules of Professional Conduct and the Business and Professions Code. The hearing judge found him culpable on all four counts. Balancing Orlyn's misconduct with his 38-year record of discipline-free practice, the hearing judge recommended that Orlyn be suspended for four years, stayed, and placed on probation with a two-year actual suspension and until he provides proof of restitution and of his rehabilitation, present fitness to practice law and present learning and ability in the general law.

Both Orlyn and the State Bar seek review. Orlyn argues that this disciplinary action is barred by the statute of limitations, and that in any event, the State Bar failed to present clear and convincing evidence to support the charges. The State Bar urges disbarment due to Orlyn's serious misconduct and lack of insight about his unethical conduct.

Upon independent review of the record (*In re Morse* (1995) 11 Cal.4th 184, 207), we adopt the hearing judge's findings of fact and conclusions of law as summarized below, except we find that the amount of restitution owed is greater than the hearing judge found, and we give mitigation credit for Orlyn's trial stipulation. In all other respects, we agree with and adopt the hearing judge's findings and recommended discipline.

II. FINDINGS OF FACT

Orlyn was admitted to practice law in California in 1965 and has no prior history of discipline. He successfully represented Adrian Carrillo at trial and on appeal in a civil case involving a real estate transaction. Carrillo sold an apartment building he owned, utilizing the services of Victor Juarez, a real estate broker, and Accurate Escrow., Inc. When Carrillo received proceeds from the sale that were less than expected, he hired Orlyn to investigate. At their initial meeting in October 1999, Orlyn stated that he would charge a fee of $5,000 to fully litigate the matter. Carrillo paid $2,500 and agreed to pay an additional $2,500 in advance if the matter went to trial. Because Carrillo spoke little English, most of their conversations were assisted by a Spanish interpreter. Orlyn did not secure a written fee agreement with Carrillo.

Orlyn reviewed the escrow documents and initiated a lawsuit in July 2000 on behalf of Carrillo against the other parties to the sale. He sent Carrillo a copy of the complaint the following month. Orlyn also sent at least two letters reminding Carrillo that the remaining $2,500 was due, but Carrillo did not pay it until July 2001.

At the trial in December 2001, the court awarded Carrillo $8,400 plus unspecified costs, based on negligence by Accurate, and $11,635 plus $507 in costs, based on fraud by Juarez. The court found no liability for Accurate's payment of $23,143.84 to the Internal Revenue Service (IRS) for its lien on the property to collect a fine imposed on Carrillo for a past conviction in federal court.

At the conclusion of the trial, Carrillo and Orlyn discussed the possibility of initiating an action to recover the money collected by the IRS. Orlyn stated that he would charge an additional $5,000 to do so. Carrillo did not have the money, and responded that he would have to pay any fees with the funds he would receive from the judgments against Accurate and Juarez. He never officially hired Orlyn for the IRS matter and Orlyn performed only minimal work on it.

Shortly after the trial, Accurate and Juarez each filed an appeal. In January 2002, Orlyn wrote to Carrillo, advising that he would charge an additional $5,000 retainer to handle the appeals and requesting payment in advance. Carrillo agreed to pay the additional fee. Once again, Orlyn did not obtain a written fee agreement.

Although Carrillo made no payment, Orlyn began work on the appeals. In July 2002, Orlyn sent two letters reminding Carrillo of the $5,000 due. Carrillo testified that he paid Orlyn $1,000 in August 2002, and told him he did not have the remaining $4,000 but would pay it when he received the money from the outstanding judgments in the Accurate and Juarez matters.

Orlyn's efforts on appeal were successful. The Court of Appeal upheld the judgment against Accurate and dismissed Juarez' appeal. Even after the appeals were concluded, Carrillo had still not paid the remaining $4,000. In April 2003, Orlyn then filed a motion against Accurate seeking attorney fees. In his declaration, Orlyn stated he had worked 70 hours at a rate of $250 per hour, and attached a billing statement listing fees and costs totaling $18,215.25. Orlyn testified that Carrillo had orally agreed to the $250 per hour and owed him an unpaid balance of $12,215.25. He claimed that he sent Carrillo a copy of the statement of services, but Carrillo denied ever seeing the document until the time of trial.

On May 8, 2003, the motion for fees was denied and Accurate issued a check for the judgment amount of $9,000, made payable to both Orlyn and Carrillo. The check was mailed to Orlyn with an accompanying letter stating that Orlyn was authorized to cash the check upon

receipt of a Notice of Satisfaction of Judgment. Carrillo testified that Orlyn never told him about the $9,000 check from Accurate. Orlyn testified that he told Carrillo by phone that he received the money. Orlyn signed both his and Carrillo's names to the check, deposited it into his general account and applied the entire $9,000 to his outstanding fees. On May 22, 2003, without informing Carrillo, Orlyn executed and filed an Acknowledgment of Satisfaction of Judgment as to Accurate that stated: "The judgment creditor has accepted payment or performance other than that specified in the judgment in full satisfaction of the judgment."

Orlyn had limited communication with Carrillo after he received the check from Accurate. In June, October and November of 2004, he wrote Carrillo letters about his efforts to collect the outstanding judgment against Juarez. He did not tell Carrillo in these letters that he had received the $9,000 from Accurate and had filed the satisfaction of judgment. After the November letter, Carrillo became concerned about collecting his judgments. He testified that he made phone calls to Orlyn and visited his office to discuss the status of his case. When Orlyn neither returned the calls nor met with him, Carrillo filed a State Bar complaint in August, 2005, alleging he had "lost communication" with his attorney. Only after Carrillo filed the complaint did he discover that Orlyn had collected the $9,000 judgment from Accurate.

III. THIS ACTION IS NOT BARRED BY THE STATUTE OF LIMITATIONS

Orlyn contends that this disciplinary matter is barred by the limitations period for attorney malpractice actions set forth in Code of Civil Procedure section 340.6.[1] This argument lacks merit. It is settled that the limitations period governing attorney malpractice actions is

[1] Code of Civil Procedure section 340.6, subdivision (a) provides, in relevant part: "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first."

inapplicable to matters of attorney discipline.[2] Instead, the Rules of Procedure of the State Bar, rule 51(a), which provides for a five-year limitations period in attorney discipline cases, is controlling.[3] The Notice of Disciplinary Charges against Orlyn was filed and served on May 16, 2007. Even assuming no tolling of the period of limitations, the rule would bar only violations occurring prior to May 16, 2002. Orlyn's misconduct began in May 2003 when he misappropriated the $9,000 check, and continued as detailed below. The alleged misconduct was well within the legally acceptable five-year filing period. Therefore, we reject Orlyn's claim that this matter was not timely filed.

IV. ORLYN IS CULPABLE ON FOUR COUNTS OF MISCONDUCT

Orlyn is charged with the following four counts of misconduct: (1) moral turpitude by misappropriating $9,000 belonging to Carrillo; (2) failing to deposit client funds in a client trust account (CTA); (3) moral turpitude by endorsing Carrillo's name on a check without his knowledge or consent; and (4) failing to notify Carrillo of the receipt of the Accurate check. At trial, in briefing on review and at oral argument, Orlyn made one primary claim to justify that he was entitled to the $9,000 and not culpable for any misconduct – he asserted that Carrillo orally assigned all money from the Accurate and Juarez judgments to Orlyn for his fees. As discussed below, we reject this argument and adopt the hearing judge's findings of culpability on all four counts.

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[2] "[A] statute of limitations barring a civil action brought by an aggrieved party long has been inapplicable to a disciplinary proceeding of a state administrative agency. [Citations.]" (*Bernd v. Eu* (1979) 100 Cal.App.3d 511, 515-516.)

[3] Rule 51(a) provides: "A disciplinary proceeding based solely on a complainant's allegations 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. Count One: Misappropriation Constituting Moral Turpitude (Business and Professions Code Section 6106)[4]

The State Bar alleged that Orlyn misappropriated a client's funds and committed an act of moral turpitude by using those funds as payment for Carrillo's outstanding legal fees. "[A]n attorney's failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. [Citation.]" (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.) Moreover, "[a]n attorney may not unilaterally determine his own fee and withhold trust funds to satisfy it even though he may be entitled to reimbursement for his services. [Citation.]" (*Crooks v. State Bar* (1970) 3 Cal.3d 346, 358.) Orlyn received the $9,000 judgment proceeds without notifying Carrillo[5] and then used them for his own fees without Carrillo's permission. By doing so, we find Orlyn committed "a serious offense involving moral turpitude." (*Morales v. State Bar* (1988) 44 Cal.3d 1037, 1045 [attorney's intentional deposit of check benefiting former firm's client into account other than CTA involved moral turpitude].)

Orlyn's contention that he did not misappropriate the money because Carrillo had orally assigned it to him is not persuasive. After weighing conflicting testimony on this issue, the hearing judge specifically found that no such oral assignment existed. We agree with and defer to this finding, which is based on an assessment of credibility. (See Rules Proc. of State Bar, rule 305(a); *Connor v. State Bar* (1990) 50 Cal.3d 1047, 1055.)

Our own reading of the record confirms this credibility finding. Carrillo testified repeatedly that he told Orlyn he would pay the outstanding fees once he collected the money from the judgments. Orlyn himself testified that the assignment consisted of an informal

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[4] Unless otherwise noted, all further references to "section" or "sections" are to the Business and Professions Code.

[5] The hearing judge found that Orlyn's testimony that he orally notified Carrillo about receiving the $9,000 "lacked credibility and conflicted with the credible testimony of Carrillo and Juanita Gonzalez (one of Carrillo's interpreters)." We defer to the hearing judge's credibility determination.

conversation in which Carrillo simply said words to the effect of "when I get paid, you get paid." Moreover, we note that Orlyn's claimed oral assignment did not comply with rule 3-300, which requires an attorney to advise a client in writing and to obtain a client's written consent before acquiring a pecuniary interest adverse to that client. (See *In the Matter of Yagman* (Review Dept. 1997) 3 State Bar Ct. Rptr. 788, 796, fn. 7 [assignment of right to recover attorney's fees from clients must be fair and reasonable and its terms and advisement that clients are entitled to advice of independent counsel must be in writing.])

B. Count Two: Failure to Deposit Client Funds in a Trust Account (Rule 4-100(A))

An attorney violates rule 4-100(A) when he fails to deposit client funds in the manner designated by the rule. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976.) Rule 4-100(A) requires that "[a]ll funds received or held for the benefit of clients . . . shall be deposited in one or more identifiable bank accounts labeled 'Trust Account,' 'Client's Funds Account' or words of similar import . . . ." Orlyn violated this rule because the funds from Accurate to satisfy the judgment clearly were meant to benefit Carrillo, and Orlyn admittedly did not deposit them in a CTA. In fact, the $9,000 Accurate check was made out to Carrillo as well as to Orlyn. Any belief Orlyn may have held about the funds being assigned to him is unreasonable and is not a defense to this rule violation. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 586 [rule 4-100(A) leaves no room for inquiry into attorney intent and good faith is no defense to rule 4-100 violation].). However, because failing to deposit funds in a CTA is included in our finding of misappropriation in Count One, we do not consider this additional violation in determining the appropriate level of discipline.

C. Count Three: Unauthorized Endorsement Constituting Moral Turpitude (Section 6106)

The State Bar alleges that Orlyn committed an act of moral turpitude, dishonesty or corruption when he signed Carrillo's name to the Accurate check without Carrillo's

authorization. An attorney acts with moral turpitude when he endorses a client's signature to a check and deposits it without the client's consent. (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 790, 793-795.)

Orlyn argues that he did not act with moral turpitude as he had a right to endorse the check with Carrillo's name based on the oral assignment. As previously discussed, we reject this argument since the evidence clearly established there was no valid assignment by Carrillo. Authority to endorse negotiable instruments payable to the client must be expressly granted. (*Palomo v. State Bar, supra,* 36 Cal.3d at p. 794.) Even considering his claim of assignment, Orlyn's unauthorized endorsement and deposit of the check was, at a minimum, an act of gross negligence. Moral turpitude is "broadly defined," and occurs through an attorney's intentional or grossly negligent actions that result in a breach of a fiduciary duty to a client. (*In the Matter of Gillis* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387, 397.) Thus, we find that Orlyn's actions constitute moral turpitude in violation of section 6106.

D. Count Four: Failure to Notify Client Regarding Receipt of Funds (Rule 4-100(B)(1))

Rule 4-100(B)(1) requires an attorney to "Promptly notify a client of the receipt of the client's funds, securities, or other properties." As set forth above, we defer to the hearing judge's finding that Orlyn failed to notify Carrillo about the Accurate check. This failure constitutes a violation of the rule.

V. DISCIPLINE

We determine the appropriate discipline in light of all relevant circumstances, including mitigating and aggravating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Orlyn must establish mitigation by clear and convincing evidence, while the State Bar has the same burden of proof for aggravating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(e) & 1.2(b).)

A. Three Factors in Aggravation

We find three factors in aggravation. First, Orlyn committed multiple acts of misconduct. (Std. 1.2(b)(ii).) Second, he significantly harmed Carrillo. (Std. 1.2(b)(iv).) At the time of trial, Orlyn had still not paid the $9,000 to Carrillo, thereby depriving his client of a substantial sum of money, including interest on the money for over four years.[6] Carrillo was in need of this money – he testified that he had no funds available even to pay attorney fees. And third, Orlyn demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) After reviewing the record, we agree with the hearing judge's conclusion that Orlyn "has no insight regarding his unethical behavior." Orlyn repeatedly justified his misconduct by alleging an oral assignment, despite the contrary testimony of his client and the interpreter, and despite his own failure to comply with the legal requirements of a valid assignment.

The State Bar urges that we also find in aggravation that Orlyn lacked candor because the hearing judge found that his claim that he notified Carrillo about receiving the Accurate check was not credible. (Std. 1.2(b)(vi).) A finding that a respondent is not credible on an issue indicates only that he is not believable; a finding that a respondent lacked candor indicates he deliberately lied. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal State Bar Ct. Rptr. 269, 282.) We find that there is no clear and convincing evidence that Orlyn deliberately lied to the court. (*Ibid.* [finding lack of candor requires clear and convincing evidence]; *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 523 [lack of candor finding not justified where "merely based on respondent's different memory of events from that of complaining former clients"].) We decline to find in aggravation that Orlyn lacked candor.

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[6] The Accurate check was issued on May 8, 2003 and trial began on November 29, 2007.

B. Two Factors in Mitigation

Orlyn offered no evidence in mitigation, but he is entitled to credit for two factors. First, we assign great weight to his 38 years of discipline-free practice before this misconduct. (Std. 1.2(e)(i); *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 383, 385 [40 years of discipline-free practice was "strong mitigating factor"].) Further, he cooperated with the State Bar by entering into a stipulation as to background facts. Although the stipulated facts were not difficult to prove (compare *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [attorney afforded substantial mitigation for his cooperation by stipulating to facts not easily provable]) and Orlyn did not admit culpability, the stipulation was relevant and assisted the State Bar's prosecution of the case. We accord Orlyn limited mitigation for cooperation under standard 1.2(e)(v).

C. Level of Discipline

We start with the standards in determining the appropriate discipline to recommend. Guided by standard 1.6(a), we consider the most severe discipline provided by the various standards applicable to the misconduct. Standard 2.3 provides for actual suspension or disbarment for an act of moral turpitude, while standard 2.2(a) suggests disbarment for willful misappropriation unless "the most compelling mitigating circumstances clearly predominate," in which case a one-year actual suspension is warranted. The Supreme Court does not apply the standards in a "talismanic fashion." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.) With respect to standard 2.2(a), the Supreme Court has stated that the recommended sanctions are not faithful to the teachings of its decisions. (*Kelly v. State Bar* (1991) 53 Cal.3d 509, 518; *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1022 [disbarment not always appropriate in misappropriation cases "[e]ven where the most compelling mitigating circumstances do not clearly predominate"].)

The State Bar contends that the hearing judge assigned too much weight to Orlyn's nearly four decades of discipline-free practice, and that this mitigation is not compelling enough to prevent disbarment. "[A]lthough the record does not provide a justifiable explanation for [Orlyn's] misconduct," this matter involves an "isolated instance of misconduct" arising from a single failure to distribute funds to a client. (*In the Matter of McCarthy*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 385.) Orlyn's conduct thus appears aberrational in light of his lengthy discipline-free practice. In such instances, disbarment is inappropriate. (*Ibid.*) Accordingly, our recommendation departs from a strict application of standard 2.2(a).

Orlyn's misconduct was nonetheless serious. (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128 ["[M]isappropriation of a client's funds is a grievous breach of an attorney's professional ethics. Not only does it harm the individual client whose money has been taken, it also endangers the confidence of the public at large in the legal profession."].) And because Orlyn lacks insight into his misconduct, a lengthy period of actual suspension is warranted.

We conclude that a two-year period of actual suspension, to be terminated only after Orlyn provides proof of his rehabilitation and fitness to practice law, is appropriate to protect the public. Our recommendation is supported by comparable case law as the proper sanction to ensure discipline proportionate to the misconduct. (*Lipson v. State Bar, supra*, 53 Cal.3d at p. 1022 [two years' actual suspension for attorney who misappropriated $8,400, acted with moral turpitude, borrowed money from another client without fully disclosing terms of transaction, and failed to pay restitution; attorney had practiced for 42 years with no prior discipline and his misconduct did not involve deliberate deceit]; *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367 [two years' actual suspension for attorney who committed one act of misappropriation of approximately $1,300 after only five years of practice; attorney was "definitely wrong" but not

"venal"]; *In the Matter of McCarthy, supra*, 4 Cal. State Bar Ct. Rptr. 364 [two years' actual suspension for attorney who willfully misappropriated over $20,000 in violation of section 6106 and offered settlement in exchange for withdrawal of State Bar disciplinary complaint; attorney had over 40 years with no prior discipline and his misconduct was aberrational].)[7]

As to restitution, the hearing judge ordered that Orlyn must pay Carrillo $5,000 (of the $9,000 collected from Accurate) since Carrillo acknowledged that he owed $4,000 in fees. However, the record reveals that Carrillo was confused and uncertain about the fees, including whether the $1,000 he paid was for the appeal or for the IRS matter. Regardless, given Orlyn's lack of insight into his misconduct, we recommend restitution of the full $9,000 that was misappropriated. (*In The Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 173 [where attorney misappropriated $7,823 of client funds to pay attorney fee, full restitution proper even though substantial legal services performed because payment will "effectuate respondent's rehabilitation and protect the public from similar future misconduct."].) Since Orlyn had no written retainer agreement, he will have to resolve any fee dispute with Carrillo in the appropriate forum. We offer no opinion regarding his right, if any, to fees in this case.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Barry M. Orlyn be suspended from the practice of law for four years, that execution of the suspension be stayed, and that he be placed on probation for three years on the following conditions:

1. He must be suspended from the practice of law for the first two years of his probation, and remain suspended until the following conditions are satisfied:

[7] The State Bar cites cases in which attorneys were disbarred after one instance of misappropriation. (*Chang v. State Ba, supra*, 49 Cal.3d 114; *Grim v. State Bar* (1991) 53 Cal.3d 21.) These cases do not provide guidance in Orlyn's case because the attorneys had practiced for much shorter periods of time (eight and 20 years, respectively) than Orlyn, and their circumstances involved greater aggravation.

i. He makes restitution to Adrian Carrillo in the amount of $9,000 plus 10 percent interest per annum from May 8, 2003 (or reimburses the Client Security Fund to the extent of any payment from the fund to Adrian Carrillo, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles;

ii. He provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of this probation.

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 of the State Bar of California 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. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period. 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 Office of Probation that 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 after the effective date of the discipline herein, he must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, given periodically by the State Bar, and passage of the test given at the end of the 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. The period of probation will commence on the effective date of the Order of the Supreme Court imposing discipline in this matter.

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

PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Barry M. Orlyn be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

RULE 9.20

We further recommend that Barry M. Orlyn be ordered to comply with rule 9.20, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein. 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 section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, J.

We concur:

REMKE, P. J.

EPSTEIN, J.

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

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 16, 2009, I deposited a true copy of the following document(s):

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

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

BARRY M. ORLYN
P O BOX 45257
LOS ANGELES, CA 90045

BARRY M. ORLYN
5959 W. CENTURY BLVD, STE 1114
LOS ANGELES, CA 90045

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

ELI D. MORGENSTERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 16, 2009.

Rosalie Ruiz
Case Administrator
State Bar Court