

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 05-O-04953-RAP
)
THOMAS HOWARD RAVATT,)
) DECISION
Member No. 67228,)
)
A Member of the State Bar.)

I. INTRODUCTION

In this contested, original disciplinary proceeding, respondent **THOMAS HOWARD RAVATT** (“respondent”) is charged with four counts of misconduct in one client matter: (1) failure to perform with competence; (2) charging and collecting an illegal fee; (3) failure to return unearned fees; and (4) moral turpitude.¹ The court finds respondent culpable of failing to perform with competence. Respondent was represented by Attorney James R. DiFrank. The State Bar was represented by Deputy Trial Counsel Jean Cha.

II. PROCEDURAL HISTORY

The State Bar of California initiated this proceeding by filing a notice of disciplinary charges (“NDC”) on August 29, 2007. A review of the court’s records reveals that respondent did not file a response to the NDC, however, he did participate in the present proceedings and the State Bar did not request entry of his default. (See Rules Proc. of State Bar, rule 103(d).)

¹ By order filed August 26, 2008, the court dismissed with prejudice court four [moral turpitude].

Trial was held on the following dates: April 1-2, 2008, June 16-17, 2008, and October 1-8, 2008. At trial, the following witnesses testified: respondent; John Ramos, Esq.; Robert Kern, Esq.; Stefanie Clement, Esq.; Ronald Berman, Esq.; Agustina Serrano; Hilda Serrano; Superior Court Commissioner Michael Duffy; Celeste M. Mulrooney, Esq.; Craig Willford, Esq.; and John D. Elder. At the end of trial, the case was submitted for decision on October 8, 2008.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 18, 1975, and was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

B. Credibility Determinations

With respect to the credibility of the witnesses, the court has carefully weighed and considered their demeanor while testifying; the manner in which they testified; their personal interest or lack thereof in the outcome of this proceeding; and their capacity to accurately perceive, recollect, and communicate the matters on which they testified. (See, e.g, Evid. Code section 780 [lists of factors to consider in determining credibility].) Except as otherwise noted, the court finds the testimony of the witnesses to be credible.

C. Stipulated Facts

The parties stipulated to the following facts:

On January 19, 2000, the Clark County District Court in Nevada determined that Jose N. Flores (“Jose”), a resident at the time of Clark County, Nevada, was incompetent to manage his person and estate. Agustina Serrano (“Agustina”), Hilda Serrano, Maria Guadalupe Martinez, and Laura Flores Salazar were appointed co-guardians of Jose in a matter entitled *In the Matter of the Guardianship of Jose N. Flores*, Clark County District Court, Nevada, Case No.

99G20808 (“the guardianship”). The parties agreed by stipulation that all funds belonging to Jose were to be on deposit in a blocked account. Counsel for the guardianship in Nevada was attorney Stefanie Clement (“Clement”).

On January 30, 2001, respondent was hired by Agustina to petition the Superior Court of California to open a California conservatorship over Jose, her father, and his estate. Agustina was to be appointed conservator. Jose was moved to California in late 2000.

On January 30, 2001, respondent was paid attorney’s fees by Agustina in the amount of \$700.00, with two checks, one in the amount of \$500.00, check no. 1074, and the other in the amount of \$200.00, check no. 1075, drawn on a Bank of America account.

Thereafter, on June 21, 2001, respondent filed a Petition for the Appointment of Probate Conservator over the Person and Estate of Jose Flores seeking to have Agustina appointed conservator in a matter entitled *Conservatorship of the Person and Estate of Jose N. Flores*, Pomona Superior Court, California, Case No. KP007850 (“the conservatorship”). Also, on this date, respondent filed a Capacity Declaration from Dr. Carlos Meza, M.D., setting forth the basis for the conservatorship. A hearing in the matter was set for August 3, 2001.

On June 22, 2001, the California Superior Court appointed attorney Robert L. Kern (“Kern”), a Probate Volunteer Panel (“PVP”) attorney, as counsel for Jose, the proposed conservatee. On June 26, 2001, Kern submitted to the court a Report of Attorney (PVP) Appointed by Court to Represent Jose N. Flores.

On June 26, 2001, respondent was paid attorney’s fees by Agustina in the amount of \$350.00, by check no. 1100.

On July 20, 2001, the court appointed Wing Lee as Court Investigator. On July 24, 2001, the court received the Probate Investigator’s Petition Report.

On August 3, 2001, respondent appeared at a hearing that had been set on June 21, 2001. The hearing was continued to September 28, 2001, at respondent's request.

On September 21, 2001, the court received Proof of Service Re Citation for Conservatorship. On September 28, 2001, respondent appeared at a hearing where the petition for conservatorship was granted by the court.

On September 28, 2001, respondent was paid attorney's fees by Agustina in the amount of \$1,800.00, check no. 1134. Respondent had received from Agustina a total of \$2,850.00 in connection with the conservatorship matter which included attorney's fees and reimbursement for costs.

On September 28, 2001, respondent informed Agustina that the court had appointed Agustina conservator over Jose at the hearing in which respondent appeared.

On February 12, 2003, respondent wrote and sent a letter to Clement and requested a transfer of Jose's Nevada assets to be placed in the California Conservatorship.

On March 11, 2003, respondent wrote and sent a letter to Clement and requested a final accounting and final orders regarding the guardianship.

On January 15, 2004, Clement wrote and sent a letter and fax to respondent to follow up on her correspondence of October 2003.

In May or June 2004, respondent, through attorney John R. Ramos ("Ramos") - who was associated with respondent, filed a draft Order Appointing Probate Conservator. On June 3, 2004, the draft Order Appointing Conservator was rejected by the probate attorney because it was missing the signature of the PVP attorney approving the order as to form and content.

On September 28, 2004, Ramos wrote and sent a letter to Kern and requested that Kern approve the order appointing a probate conservator as to form and content.

On October 4, 2004, Kern wrote and sent a letter to Ramos and requested a copy of the minute order from the September 28, 2001 hearing and information regarding the reasons for the need for the conservatorship at this time.²

On September 30, 2004, Agustina employed new counsel, Ronald Berman (“Berman”) to represent her in the conservatorship matter. Respondent signed a substitution of attorney form on this date and provided Berman with Agustina’s original file.

On October 12, 2004, a substitution of attorney was filed with the court substituting Berman for respondent. On October 27, 2004, Berman wrote and sent a letter to Kern enclosing an Order Appointing Probate Conservator and Minute Order of the hearing held on September 28, 2001, and requested Kern’s approval as to form and content.

On November 29, 2004, Kern wrote and sent a letter to Berman and enclosed the proposed Order Appointing Probate Conservator which he approved as to form only noting that he was not agreeing as to content and that there was “no reason given for why [the] order is now required.”

On December 6, 2004, Berman submitted an Order Appointing Probate Conservator with the court. On December 17, 2004, the Order Appointing Probate Conservator was approved by the court.

Berman notified the California Superior Court that on January 27, 2005, Jose N. Flores died (death certificate was not attached to the notification). Subsequently, the conservatorship was dissolved and the Nevada assets were not transferred to California.

D. Additional Finding of Facts

In 2001, PVP Kern would not sign-off on the need for a conservatorship to be opened in California in the Flores matter. Based on Kern’s disapproval, respondent believed that Kern

² As previously noted, the petition for conservatorship was granted on September 28, 2001.

would not sign off on the Letters of Conservatorship. Respondent did not contact Kern in an attempt to obtain Kern's approval. Instead, respondent did nothing, testifying that he agreed with Kern's position that there was no necessity at that time because Jose Flores' interests were being protected by the Nevada courts. Respondent, however, did not send any correspondence to Agustina detailing this new found belief or otherwise informing his client of Kern's position regarding the Letters of Conservatorship.

Respondent also never notified Clement of the problems he had encountered in the conservatorship. Clement was waiting for respondent to perform his task of successfully completing the California conservatorship so that she could petition the Nevada court for permission to transfer Jose's assets to California. As Kern testified, the California conservatorship needed to be in place before another state, in this case Nevada, could transfer jurisdiction and control over the person and assets of a conservatee. Accordingly, it would have been impossible for Clement to send any of Jose's assets to respondent, as respondent had requested in 2003. Respondent was responsible for the representation of Agustina in the California conservatorship, however, the record also shows that Clement did little to contact respondent concerning the status of the California conservatorship. Unfortunately for Jose and Agustina, there was minimal contact between the two attorneys that were entrusted with handling the Flores matter in Nevada and California.

Kern was not present in court on September 28, 2001, when the court approved the petition for appointment of conservator in the conservatorship. Kern testified that he would have given his approval as to form and content if respondent would have sent him a copy of the court's September 28, 2001 minute order. However, respondent never contacted Kern. Again, Kern would have given his approval when Ramos attempted to complete the conservatorship in

2004. However, once again, a copy of the court's September 28, 2001 minute order was not attached.³

As the evidence shows, respondent initially filed the proper documents to have Agustina appointed as conservator in the conservatorship. However, when Kern failed to give his approval, respondent did not contact Kern and discuss the reasons why he disapproved, nor did respondent petition the court and explain why the Letters of Conservatorship should be granted. Additionally, respondent did not contact his client or Clement to explain the problems he had encountered. Finally, in 2004, after being contacted by Agustina, respondent asked Ramos to assist.

Respondent argues that the Nevada conservatorship is still in place, even after Jose's death in 2005, and that the dispute between family members that occurred after Jose's death is evidence that there was nothing more respondent could have done in service of Agustina. In addition, respondent contends that Agustina removed Jose from Nevada in violation of that state's jurisdiction over Jose and his assets, and infers that there was a family dispute over the assets at the time of his removal, thus the Nevada court should retain jurisdiction. This argument fails for several reasons. As the testimony in this case shows, it is not uncommon for a conservatee to be moved from one state to another, qualify as a resident in the new state, and have the matter transferred to the new state. The inference that Jose was illegally taken to California from Nevada by Agustina is of little evidentiary value. Also of little evidentiary value is respondent's argument that the family dispute in Nevada would have precluded Nevada from terminating jurisdiction and transferring jurisdiction to California courts. There is minimal evidence in the record to support such an argument.

³ Finally, in 2004, Kern approved the Order Appointing Probate Conservator as to form only when Berman successfully petitioned the court. To Kern, if the court signed off, it was okay by him.

Respondent argues that after Kern refused to give his approval, respondent concluded that Kern was correct and that a conservatorship in California was not needed. Accordingly, respondent opines that he cannot be held culpable for failing to perform with competence due to the fact that he simply made an error in judgment.

The court does not agree. The court's finding that respondent failed to perform with competence is not based on an error in judgment but rather for respondent's failure to contact Kern after respondent became aware that Kern disapproved of the conservatorship.⁴ Respondent then compounded this error by doing almost nothing in the matter until contacted by Agustina a few years later. Once again, respondent and Ramos did not speak with Kern and were unable to obtain his approval. Respondent's failure to contact Kern, or file a pleading with the court requesting that the letters be granted, led to a long period of inactivity that could have, and should have, been avoided.

Other than respondent's testimony, there is no evidence that respondent ever explained to Agustina why a final order was not obtained or the reason for the delay. Respondent took almost no action in the underlying matter for a period of at least two years. Respondent's inaction did not result from an error in judgment or mere negligence, but instead constitutes a failure to act competently. Accordingly, respondent's claims of mistake of judgment and/or negligence must fail.

Respondent accepted fees from Agustina in the amount of \$2,850. The fees were paid by checks drawn on an account set up to pay for Jose's expenses. The checks did not indicate that they were from a special conservatorship account, as is required by California law. The checks were drawn from an account in a bank located in Florida, with Agustina's and Maria Guadalupe Martinez's names on the checks. Respondent claims that he agreed to represent Agustina and

⁴ As Kern testified, all he would have required was a copy of the court's minute order to approve the order.

was paid from Agustina's personal funds, and not funds from Jose's expense account.

Respondent testified that he never accepts representation in matters such as this unless he is paid from personal funds because of the chance of there being no funds in the estate to later pay his fees.⁵

Years later, Berman sent correspondence to respondent concerning respondent's fees and noting that the fees were paid from Jose's expense account. Respondent did not return any of the \$2,850 to Jose's expense account, which was under Nevada court jurisdiction. In addition, when notified that his fees were paid from the expense account, respondent did not petition the Nevada court for approval of his fees.

Pursuant to Probate Code sections 2640 and 2642, court ordered approval is required when the funds to pay an attorney's legal fee comes from a conservatee's expense account. Of course, if the funds come from a private source, outside the conservatee's account, then those funds do not require court ordered approval.

Respondent testified that in June 2001, Clement submitted certain expense documents for approval to the Nevada court in the Flores matter, and that the Nevada court may have approved his fee for at least the first two checks issued to him by Agustina, since the first two checks appeared on a list of expenses of the estate prepared by Agustina and sent to Clement. Agustina testified that respondent's fees may have been approved by the Nevada court. Clement, however, does not think that respondent's fees have been approved by the Nevada court.

The court finds credible respondent's testimony concerning his handling of the fees in this matter. The court also finds credible the testimony of Clement on this subject. However, because the records of the Nevada court in the Flores matter are not before this court, there is

⁵ In contrast, Agustina testified that she informed respondent at their first meeting that his fee would be paid from Jose's expense account. The court finds that Agustina's testimony on this issue was not credible.

insufficient evidence to establish, by clear and convincing evidence, which, if any, of respondent's fees were approved by the Nevada court.

Respondent performed some service for Agustina, however, he did not accomplish the goal of his representation, to open a conservatorship in California in the Flores matter and to assist in the transfer of Jose's assets from Nevada to California. Attorney Berman was able to obtain PVP attorney Kern's approval, although limited and begrudgingly. All the pleadings filed in court by Berman were almost the exact duplicate of the pleadings filed by respondent. The court cannot determine what the true value of respondent's service should be in this matter and therefore declines to order that respondent return fees to Jose's estate or to Augustina.

E. Conclusions of Law

Count One – Failure to Perform

The court finds that there is clear and convincing evidence that respondent failed to perform legal services with competence in the Flores conservatorship matter in willful violation of rule 3-110(A), Rules of Professional Conduct.

Count Two – Illegal Fee

The court finds that there is no clear and convincing evidence that respondent accepted an illegal fee in willful violation of rule 4-200(A), Rules of Professional Conduct.

Count Three – Failure to Return an Unearned Fee

The court finds that there is no clear and convincing evidence that respondent failed to return an unearned fee in willful violation of rule 3-700(D)(2), Rules of Professional Conduct.

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

A. Mitigation

The record establishes the following factor in mitigation by clear and convincing evidence. (Rule Proc. of State Bar, tit. IV, Stds for Atty. Sanctions of Prof Misconduct (“standards”), std. 1.2(e).)

Respondent presented credible evidence of good character. (Std. 1.2(e)(vi).) Three attorneys and one superior court commissioner testified in support of respondent’s good character, truthfulness and honesty. All the character witnesses were fully aware of the allegations of misconduct pending against respondent and have known respondent for an extended period of time.

B. Aggravation

The record establishes two factors in aggravation by clear and convincing evidence. (Std. 1.2(b).)

Respondent has a prior record of discipline. (Std. 1.2(i).)

On September 20, 2002, the Supreme Court filed an order, S108527, suspending respondent from the practice of law for six months, stayed, with two years probation. Respondent stipulated to misconduct in five client matters (State Bar Court Case Numbers 99-O-10497; 99-O-13272; 00-O-10640; 00-O-13574; 00-O-13817;⁶ and 00-O-14677). Respondent stipulated to five counts of failing to respond to client inquires in violation of Business and Professions Code section 6068, subdivision (m), and one count of failing to perform with competence⁷ in violation of rule 3-110(A), Rules of Professional Conduct. In mitigation, respondent had no prior record of discipline. There were no aggravating circumstances.

On July 1, 2005, the Supreme Court filed an order, S133039, suspending respondent from the practice of law in the State of California for one year, stayed, with two years probation, including thirty days actual suspension. Respondent stipulated to misconduct in one client

⁶ All the charges under this case number were dismissed by stipulation.

⁷ The basis for this charge was respondent’s failure to properly supervise an employee.

matter (State Bar Court Case number 03-O-01341) involving his to failing to maintain client funds in a client trust account in violation of rule 4-100(A) of the California Rules of Professional Conduct, and to failing to pay client funds promptly as requested by the client in violation of rule 4-100(B)(4) of the California Rules of Professional Conduct. In aggravation, respondent had a prior record of discipline. In mitigation, respondent displayed candor and recognition of wrongdoing while working with the State Bar.

In addition, respondent's present misconduct significantly harmed his client. (Std. 1.2(iv).) Due to respondent's failure to perform with competence, Jose Flores' conservatorship in California was untimely and ineffective.⁸

V. DISCUSSION

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards call for the imposition of a minimum sanction ranging from reproof to disbarment. (Standards 2.4(b) and 1.7(b).) Standard 2.4(b) relates to cases involving an attorney's willful failure to perform services in an individual matter, not demonstrating a pattern of misconduct. It states that culpability of such a violation "shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client."

⁸ The court finds respondent's argument, that there was no harm due to the fact that the conservatee was still protected by the Nevada guardianship, to be without merit.

Due to respondent's prior record of discipline, the court also looks to standard 1.7(b) for guidance. Standard 1.7(b) provides that when an attorney has two prior records of discipline, "the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

The standards, however, "do not mandate a specific discipline." (In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (Howard v. State Bar (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (In re Silverton, (2005) 36 Cal.4th 81, 92.)

The State Bar urges that respondent be disbarred or, in the alternative, be actually suspended from the practice of law for a period of two years. Respondent argues that all counts should be dismissed or, in the alternative, he should receive only a short period of actual suspension.

Historically, the California Supreme Court and the Review Department of the State Bar Court have not followed standard 1.7(b) in a rigid fashion. (See *Conroy v. State Bar* (1991) 53 Cal.3d 495; *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138; *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131; *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.) It has generally been held that standard 1.7(b) is to be applied with due regard to the nature and extent of the attorney's prior record. (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217.)

Although the present case marks respondent's third discipline, the court finds that the nature and extent of the present misconduct, as well as that of respondent's two prior records of discipline, do not warrant a recommendation of disbarment. (See *In the Matter of Meyer, supra*, 3 Cal. State Bar Ct. Rptr. 697, 704.) Considering that the present case involves a single count of failing to perform and that, in his two prior disciplines, respondent has been actually suspended for a total of 30 days, the court finds a recommendation of disbarment to be excessive and unnecessary. That being said, respondent's prior record of discipline remains a significant aggravating factor.

Therefore, the court now turns its attention to relevant case law involving failing to perform in a single client matter. The court finds *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, and *Layton v. State Bar* (1990) 50 Cal.3d 889, to be instructive.

In *Van Sloten*, an attorney with no prior record of discipline represented a client in a marital dissolution case. He worked on the matter for the first five months, submitted a proposed settlement agreement to the opposition, and, thereafter, failed to communicate with the client or take any actions for one year. The client ultimately hired new counsel and was not seriously harmed. In aggravation, the attorney demonstrated a lack of appreciation for the discipline process and the charges against him. The Supreme Court ordered that the attorney be suspended for six months, stayed, with one year of probation and no actual suspension.

In *Layton*, the attorney failed to conserve the assets and obtain the distribution of an estate for which he was the attorney and executor over a five year period. In aggravation, the attorney's misconduct significantly harmed a beneficiary by denying her distribution from the estate at a time when she was experiencing extreme financial need and also harmed the estate by depriving it of interest and causing it to incur tax penalties. The attorney was also indifferent toward rectification or atonement. In mitigation, the attorney had practiced law for over 30 years

without discipline and had been under considerable emotional and physical strain due to the need to care for his terminally-ill mother. The Supreme Court ordered that he be suspended for three years, stayed, with three years' probation, including a 30-day actual suspension.

The present case involves misconduct that is roughly similar to *Van Sloten* and *Layton*. While each of these cases has its nuances, the glaring difference between *Van Sloten* and *Layton* and the present matter is respondent's prior record of discipline. Although respondent has not engaged in a pattern of failing to perform, the court recognizes that his first discipline did involve a similar element of client neglect. Therefore, after weighing the case law, the standards, and the factors in mitigation and aggravation, the court recommends, among other things, that respondent be actually suspended from the practice of law for a period of six months.

VI. RECOMMENDED DISCIPLINE

Accordingly, it is recommended that **Thomas Howard Ravatt** be suspended from the practice of law for two years and until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), that execution of the suspension be stayed, and that respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first six months of probation;
2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;
3. Respondent 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, respondent must state whether respondent 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 thirty (30) days, the report must be submitted on the next following quarter date, and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than twenty (20) days before the last day of the probationary period and no later than the last day of the probationary period;

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

5. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

6. Within one year after the effective date of the discipline herein, respondent 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 at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of the session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fees. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules of Proc. of State Bar, rule 3201.);

7. The period of probation must commence on the effective date of the order of the Supreme Court imposing discipline in this matter; and

8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years and until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) will be satisfied and that suspension will be terminated.

The court also recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.⁹

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within one year after the effective date of the discipline herein. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

VII. COSTS

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business

⁹ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

and Professions Code section 6140.7 and as a money judgment.

Dated: November 21, 2008.

RICHARD A. PLATEL
Judge of the State Bar Court