

PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed April 24, 2009

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of

KURT KEVIN ROBINSON

A Member of the State Bar.

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06-O-11510

OPINION ON REVIEW

I. SUMMARY

The State Bar Office of Chief Trial Counsel (State Bar) has charged that respondent Kurt Kevin Robinson violated the Rules of Professional Conduct¹ by incompetently performing legal services on behalf of two clients, and failing to provide one of those clients with an accounting of legal services. Respondent has been disciplined twice in the past but has never been suspended from the practice of law. The hearing judge found respondent culpable of all three counts of alleged misconduct, and recommended that he receive a four-year stayed suspension and four years' probation, subject to conditions including restitution and suspension from the practice of law for the first two years of probation.

On our independent review, we find respondent culpable of one count of failing to provide an accounting in one client matter and one count of failing to perform competently in another. We give significant weight to mitigation evidence that respondent suffered with serious kidney disease during the time of his misconduct. Therefore, although we find respondent culpable of only two of the three charges where the hearing judge found culpability, we adopt the recommended discipline with minor modifications to restitution and the terms of probation.

¹All further references to "rule(s)" are to the State Bar Rules of Professional Conduct unless otherwise noted.

II. BACKGROUND

Respondent has been licensed to practice law in California for over 25 years. He was admitted to practice on June 3, 1983, and has two prior records of discipline for failing to meet statutory deadlines in separate cases in 1993 and in 1995.

The State Bar filed a notice of disciplinary charges (NDC) alleging respondent violated the rules during his representation of Victor Velasquez (Velasquez matter) and Raul Vasquez (Vasquez matter). In the Velasquez matter, respondent was charged with failing to perform competently, in violation of rule 3-110(A) (when he failed to obtain a conservatorship), and failing to provide an accounting, in violation of rule 4-100(B)(3). In the Vasquez matter, respondent was charged with failing to perform competently, in violation of rule 3-110(A) (when he did not appear at trial and failed to have the resulting default judgment set aside). The hearing judge found respondent culpable of all counts charged in the NDC.

In mitigation, the hearing judge found that respondent suffered from physical difficulties due to his kidney disease, he performed pro bono activities and other charitable works, and he provided evidence of good character. In aggravation, the hearing judge found two prior records of discipline, significant client harm, multiple acts of misconduct, and respondent's indifference to the consequences of his misconduct.

Respondent seeks review, arguing that the evidence was insufficient to support findings of culpability, the hearing judge did not assign proper weight to the mitigation evidence, and the degree of discipline is excessive. The State Bar asserts that the hearing judge's findings were adequately supported by the evidence, and although a strict application of the standards could result in disbarment, the minimum discipline imposed should be a period of suspension during the first two years of probation.

III. CULPABILITY

This court has independently reviewed the record (*In re Morse* (1995) 11 Cal.4th 184, 207), deferring to the hearing judge's credibility determinations, which include factual findings based on conflicting testimony. (*Conner v. State Bar* (1990) 50 Cal.3d 1047, 1056.) A disciplinary hearing before the State Bar Court is an adversarial proceeding where the State Bar has the burden of proving misconduct by evidence meeting the "clear and convincing" standard. (Rules Proc. of State Bar, rule 213.) The function of a standard of proof is to instruct the factfinder as to the degree of confidence to have in the correctness of the factual conclusions in a case. (*In re Winship* (1970) 397 U.S. 358, 370 (conc. opn.).) Evidence by a "clear and convincing" standard requires that the proof be "so clear as to leave no substantial doubt" and must be "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Sheehan v. Sullivan* (1899) 126 Cal. 189, 193.)² We review the record by this standard of proof.

A. THE VELASQUEZ MATTER

1. Findings of Fact

On July 2, 2004, Victor Velasquez (Velasquez) and his sister Veronica retained respondent to prepare a petition for conservatorship over their sister Rebecca (Becky). Velasquez paid an advance "flat fee" of \$5000 and signed a retainer agreement providing that respondent would send "periodic statements" of costs and fees and "monthly bills" for legal services exceeding \$5000. Prior to representing him, respondent advised Velasquez that he had a busy trial schedule and a serious kidney condition that required him to undergo dialysis.

Ten months later, in early May 2005, respondent filed a petition for the appointment of a probate conservator (Petition) and request for temporary conservatorship in Alameda County

²Citing *Sheehan v. Sullivan*, the California Supreme Court in *In re Angelia P.* (1981) 28 Cal.3d 908, 919, adopted a "clear and convincing" standard of proof for terminating parental rights, describing the standard as requiring "a finding of high probability."

Superior Court. The probate court denied the temporary conservatorship due to insufficient evidence but scheduled a hearing on the Petition for July 2005.

Respondent underwent a kidney transplant on May 25, 2005. Due to the emergency nature of the transplant, respondent did not inform his clients in advance of the surgery.

After the transplant, from July 2005 until September 2005, respondent appeared with Velasquez and Veronica at three probate court hearings, and the conservatorship matter was continued several times to a final date in March 2006. Before each hearing, the Alameda County Probate Examiner (examiner) filed a checklist indicating information needed to complete the Petition, including: 1) a Confidential Screening Form (Form); 2) a doctor's declaration; and 3) proof of service upon Becky.³

Respondent did not provide the court or the examiner with any of the three required items, although he did attempt to obtain the Form and medical declaration. He sent two letters advising Velasquez that the signed Form was necessary to complete the Petition. During this time, Velasquez consulted another attorney, who advised him to pursue a durable power of attorney instead of a conservatorship. Upon this advice, Velasquez never completed the Form. Respondent also sent a medical declaration to Becky's doctor to review and sign. He followed up by contacting the doctor but the declaration was never returned to him.

Prior to the final hearing on the Petition, Velasquez directed respondent to stop working on the case and made a written request for return of the \$5000 "flat fee" and an accounting of services rendered. Respondent promptly mailed a reply letter stating he would not refund any fees, but instead would send Velasquez a bill itemizing the additional costs and fees incurred. Respondent had not provided Velasquez with either periodic statements of the services that had depleted the \$5000 or monthly bills for additional services.

³Respondent testified that it was customary in probate matters to have at least two or three reviews with the probate examiner.

Shortly before the final hearing on the Petition, respondent advised Velasquez that the probate court would drop the matter from its calendar if nothing more were done. Velasquez had decided to pursue the durable power of attorney with other counsel, and instructed respondent to let the Petition drop from the court's calendar. Respondent followed this directive, did not appear at the hearing, and the court removed the conservatorship matter from the calendar. Respondent did not mail the requested accounting of his legal services until November of 2006, approximately nine months after Velasquez's written request.

2. Conclusions of Law

Count One (A): Failure to Perform with Competence Pursuant to Rule 3-110(A)

The State Bar argued, and the hearing judge found, that respondent violated rule 3-110(A) by failing to timely file the Petition, failing to provide documents requested by the probate examiner and failing to complete the conservatorship. We do not adopt the hearing judge's finding of culpability because there was insufficient evidence to prove that respondent violated rule 3-110(A) by "intentionally, recklessly, or repeatedly fail[ing] to perform legal services with competence." It was Velasquez who ultimately decided not to pursue the conservatorship. Velasquez himself testified that he instructed respondent to stop work on the case and to "just let it [the conservatorship petition] come off the calendar." Respondent was obligated to follow his client's instructions, and in doing so, performed competently. (See *Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 403-05 [client retains right to make decisions bearing on ultimate outcome of case].)

We find that respondent also performed competently before dismissal of the case. Nothing in the record demonstrates that the nine-month delay from the day respondent was hired to filing the Petition was unreasonable or caused harm to Velasquez. There is no statute of limitations for filing a conservatorship and there was no evidence that Velasquez demanded an

earlier filing of the Petition. Respondent notified Velasquez when he was retained that he was undergoing dialysis for kidney disease and had a busy trial schedule. Moreover, even after filing the Petition, respondent could not conclude the conservatorship because Velasquez and Becky's doctor failed to return the documents required by the court.⁴

Count One (B): Failure to Provide an Accounting Pursuant to Rule 4-100(B)(3)

We adopt the findings, conclusions, and decision of the hearing judge that respondent violated rule 4-100(B)(3) by failing to timely provide periodic billing statements and a final accounting. Respondent testified that since the \$5,000 paid by Velasquez was a "flat fee," he had to reconstruct his time in order to prepare the billing statement. Regardless, he failed to provide periodic statements and monthly bills as specified in the retainer agreement. Moreover, respondent did not provide a final accounting statement until nine months after Velasquez's request. This delay is unreasonable and constitutes a violation of rule 4-100(B)(3). (See *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 850 [respondent culpable of violating rule 4-100(B)(3) because unexplained five-month delay in providing accounting was unreasonable].)

B. THE VASQUEZ MATTER

1. Findings of Fact

Respondent defended Raul Vasquez, an automobile body shop owner, in four separate commercial unlawful detainer matters in San Francisco. The first matter was separate and involved Vasquez's eviction from a property in 1999. The remaining three actions were all litigated within a five-month period in 2005 in San Francisco Superior Court and each involved the property on Bayshore Boulevard that Vasquez leased from Byrnes Properties, LLC (Byrnes).

⁴Because we do not find respondent culpable of this count, restitution in the Velasquez matter is not required, and respondent's contention that he was denied due process when his proposed expert witness on conservatorship was not permitted to testify is therefore moot.

Byrnes filed the first unlawful detainer complaint in September 2005 (Bayshore I). Respondent filed an answer on behalf of Vasquez, and the case was voluntarily dismissed without prejudice. One month later, Byrnes filed a second unlawful detainer action (Bayshore II) that was also dismissed without prejudice. The day after the dismissal, Byrnes filed a third unlawful detainer complaint (Bayshore III). Vasquez paid respondent a \$2,500 retainer for Bayshore III, and respondent filed an answer. Byrnes then filed a request to set the trial date that was served on both respondent and Vasquez, and the court mailed a Notice of Time and Place of Trial to respondent and Byrnes' counsel.

Neither respondent nor Vasquez appeared in court on the trial date. Respondent was present at the courthouse but remained outside the courtroom during the trial. The court entered a default judgment awarding Byrnes possession of the property, rental damages, and attorneys' fees and costs to be determined by the court at a later date. Respondent unsuccessfully moved to set aside the default judgment, arguing that Vasquez had mis-calendared the trial date. After a subsequent motion for fees and costs, Byrnes was awarded a total judgment of \$45,903.03 against Vasquez.⁵

Respondent testified inconsistently about why he failed to attend the court trial. His various explanations included that he was concerned about Vasquez's credibility, that he could not give accurate information about Vasquez's whereabouts or status without first contacting him, and that he believed Vasquez had no valid legal defenses. Respondent further reasoned that winning the trial in Bayshore III would have been the "worst thing" he could have done because it permitted Vasquez to disregard the law and the legal consequences of not paying his rent.

⁵Vasquez testified that respondent did not inform him of the trial date. However, Vasquez provided a sworn declaration in support of his motion to set aside the default judgment stating that he simply forgot the trial date. In addition, Exhibit J reveals a handwritten note from Vasquez to the judge explaining that he missed the court date because he forgot about it. Although we do not find that respondent failed to inform Vasquez of the trial date, he had a fiduciary duty to appear at trial whether or not Vasquez was in attendance.

Although respondent blamed Vasquez, he also explained that the post-transplant medication regimen of 27 pills per day had affected his judgment since it obviously would have made more sense to appear at trial and request a continuance. Respondent conceded that he would handle the situation differently in the future but still felt that he had acted at all times in “good faith.”

2. Conclusions of Law

Count Two: Failure to Perform with Competence Pursuant to Rule 3-110(A)

We adopt the findings, conclusions, and decision of the hearing judge that respondent failed to perform legal services with competence, in violation of rule 3-110(A), by intentionally failing to appear for trial in Bayshore III. (See *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 372, 374 [respondent failed to perform with competence based in part on failing to appear at trial].)⁶ An attorney cannot refrain from performing legal services when it is to the detriment of his client’s interests simply due to misgivings about the merits of a case or conflicts with the client. In *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126, we held that even when a client fails to participate in his case or it has no merit, an attorney cannot simply decline to act. Respondent’s decision to remain outside the courtroom while a default was entered reveals a serious deficiency in his understanding of “the high degree of care and fiduciary duty he owes to those he represents.” (*Stuart v. State Bar* (1985) 40 Cal.3d 838, 847.) By failing to appear at trial, pursue other remedies or withdraw as counsel, respondent performed incompetently.

⁶The State Bar has alleged that respondent further violated rule 3-110(A) by recklessly filing a motion to set aside the default without proffering any explanation for his own failure to appear. We do not find clear and convincing evidence of misconduct in respondent’s motion to set aside the default.

IV. DISCIPLINE

The primary purpose of disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession. (Std. 1.3;⁷ *Bach v. State Bar* (1987) 43 Cal.3d 848, 856-857.) No fixed formula applies in determining the appropriate level of discipline. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.) We recommend discipline after considering all relevant circumstances, including mitigating and aggravating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

A. MITIGATION

We adopt the hearing judge's finding of three factors in mitigation.

1. Physical Disability (Std. 1.2(e)(iv))

Overshadowing respondent's actions in the Velasquez and Vasquez matters are medical issues related to his long-standing kidney disease. In 1992, he began to experience physical symptoms of the disease and his health steadily deteriorated. Beginning in 1999 and until his transplant in 2005, respondent underwent dialysis up to several hours a day. The first year of treatment following the transplant surgery required many adjustments to his anti-rejection prescriptions, and the fluctuations affected respondent's emotional state. Although his illness has been largely resolved by the transplant, respondent testified he still becomes "emotional" without medication.

Respondent presented clear and convincing evidence about the difficulties he experienced due to his kidney disease and transplant. The hearing judge admitted medical documentary evidence which included a history of heart attack and high blood pressure. Further, respondent was plagued with emotional problems as a result of the disease and having to take so many post-transplant medications. We adopt the hearing judge's finding that respondent suffered a

⁷All further references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

“physical difficulty” which “impaired his judgment and ability to perform competently.” The evidence regarding respondent’s illness is reliable and entitled to great weight in mitigation. (See *In re Brown* (1995) 12 Cal.4th 205, 222 [mitigation found where, despite lack of expert testimony, State Bar did not dispute respondent’s testimony about effects of illness].)

2. Good Character (Std. 1.2(e)(vi))

A Superior Court judge and an attorney who had employed respondent attested to respondent’s good character and general ability to practice law.⁸ The judge knew respondent for over 30 years – as a law school classmate, as opposing counsel when the judge was a prosecutor, and as a criminal defense attorney appearing before him. He described respondent as honest, trustworthy, always prepared, and respectful to opposing parties, noting that his general reputation in the legal community was “excellent.” An attorney who hired respondent to defend his staffing company from 2005 until 2007 testified that he was “quite satisfied” with respondent’s performance.

Three former clients also spoke on respondent’s behalf. A former NFL player for whom respondent acted as counsel and as a sports agent testified that respondent always appeared in court and at appointments when required, and was trustworthy to handle large sums of money. A pro bono client, who was a former foster child, testified that respondent represented her successfully in a criminal case, she has referred 10 to 15 clients to him, and they all have reported that he was a “very good lawyer.” A school teacher client in a criminal matter testified that respondent not only represented him in court but later assisted him with charity work delivering toys and food baskets.

⁸Testimony from members of the bar and bench is entitled to serious consideration because judges and attorneys have a “strong interest in maintaining the administration of justice.” (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.)

These witnesses represented a wide range of references and expressed a general understanding of respondent's misconduct. Respondent's impressive moral character evidence should be afforded "significant mitigation."

3. Community Service and Pro Bono Work

Respondent presented evidence of community service, which is a mitigating factor that is entitled to considerable weight. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Since 1984, respondent has delivered holiday food and gifts to the needy. He has volunteered to work with youth through the Champs Foundation, which he co-founded and served as a former president. Respondent also spearheaded an extensive bone marrow drive for a client's daughter who was diagnosed with leukemia, and he has performed pro bono work in many criminal cases. We find that respondent is entitled to substantial mitigation credit for performing extensive community service.

B. AGGRAVATION

We adopt the hearing judge's finding of four factors in aggravation.

1. Prior Discipline in 1993 and 1995 (Std. 1.2(b)(i))

Respondent has two prior records of discipline.⁹ In each case, he did not meet the statutory deadlines, resulting in a complete loss of the clients' claims. In his first discipline, respondent was privately reprimanded in August 1993 for failing to perform competently and failing

⁹Before culpability was determined, the State Bar revealed respondent's prior records of discipline by placing them in the exhibit binder introduced at the beginning of the trial. This practice runs afoul of rule 216(b) of the Rules of Procedure of the State Bar of California, which provides that "A record, or the existence of a record, of prior discipline is inadmissible until a finding of culpability is made, unless it tends to prove a fact in issue in determining culpability." Upon objection and a request for sanctions by respondent, the hearing judge specified that she would not deem the prior records of discipline admitted until culpability was proven. Under these circumstances, respondent has not demonstrated sufficient prejudice to justify sanctions, and the error was harmless. (See *Stuart v. State Bar*, *supra*, 40 Cal.3d at p. 845 [revealing disciplinary record prior to finding culpability was harmless error where hearing panel did not consider comment in deciding culpability and comment was made at end of prosecuting attorney's closing argument].)

to communicate in one client matter (Robinson I) from 1985 until 1988. During this time, respondent filed an improper claim against a government entity and failed to cure the error before the limitations period had run. In his second discipline, respondent received a six-month stayed suspension in January 1995 for failing to perform competently and failing to keep the clients reasonably informed of significant developments (Robinson II). Robinson II was based on a single client matter primarily in 1992 where respondent did not appear at court hearings. The action was dismissed for failure to prosecute within the statutory period.

We assign significant aggravating weight to respondent's record because there are areas of common concern with his current misconduct. In all three disciplinary matters, respondent has been found culpable of failing to competently perform services on behalf of his clients, causing them to forfeit their potential legal claims and defenses in court. In sum, respondent has fundamentally failed to fulfill his fiduciary duty to three clients.

2. Multiple Acts of Wrongdoing (Std. 1.2(b)(ii))

Respondent engaged in multiple acts of wrongdoing in the Velasquez and Vasquez matters.

3. Significant Harm (Std. 1.2(b)(iv))

Respondent's conduct significantly harmed Vasquez because his failure to appear at trial resulted in a substantial default judgment against Vasquez.

4. Indifference (Std. 1.2(b)(v))

We are persuaded that respondent was remorseful about his misconduct when he appeared at the oral argument. However, the record reveals that respondent lacked a full recognition of the serious consequences of his misconduct. While respondent currently understands that he failed to perform fiduciary duties for his client, his overall testimony

lacked remorse or understanding that his failure to appear on behalf of Vasquez was improper. (*Harris v. State Bar* (1990) 51 Cal.3d 1082, 1088.)

C. LEVEL OF DISCIPLINE

In determining the appropriate level of discipline, we look to the applicable standards and case law for guidance. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) While the standards are merely guidelines and do not mandate the discipline to be imposed (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5), we afford them great weight to further the uniform application of disciplinary measures. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) There are several applicable standards, including 1.7(b) (disbarment with two prior disciplines records), 1.6 (imposition of the most severe of two or more applicable sanctions), and 2.2(b) (minimum three months' suspension for violation of rule 4-100). We focus on standard 1.7(b), which provides that, in the absence of compelling mitigation, disbarment is appropriate when there are two prior records of discipline.

We do not recommend disbarment pursuant to standard 1.7(b) since respondent's kidney disease and ultimate transplant predominate as compelling circumstances. (*In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 240-242 [recommending actual suspension instead of disbarment despite respondent's three prior records of discipline because diagnosis and treatment of bipolar disorder was mitigating circumstance].) The Supreme Court has recognized that attorneys in the midst of suffering from serious illnesses who fail to competently perform legal services are entitled to mitigation. (See *Harris v. State Bar*, *supra*, 51 Cal.3d at pp. 1086-1089.) We also assign considerable mitigation credit to respondent's good character and community service. Strictly applying standard 1.7(b) to recommend disbarment under these circumstances would result in discipline that is disproportionate to respondent's

misconduct. (*In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201, 205, fn. 2.) Since the present misconduct occurred several years after his last discipline and while seriously ill, we do not find respondent has engaged in a “habitual course of misconduct” warranting disbarment. (See *Matthew v. State Bar* (1989) 49 Cal.3d 784, 791.)

We recommend that the appropriate discipline is four years’ stayed suspension and four years’ probation on conditions including suspension from the practice of law for the first two years of probation. We have looked to and find support in comparable case law for the appropriate sanction to ensure this discipline is proportionate to the misconduct. (See *Conroy v. State Bar* (1991) 53 Cal.3d 495 [one-year actual suspension where attorney had two prior discipline records and current case involved failing to file actions]; *Blair v. State Bar, supra*, 49 Cal.3d 762 [two-year actual suspension where attorney had three prior discipline records and current case involved loss of client claim]; *Natali v. State Bar* (1988) 45 Cal.3d 456 [three-year actual suspension where attorney had one prior discipline record involving two missed statutory deadlines].) Since the legal services respondent provided to Vasquez were negated by his decision to remain outside the courthouse and allow his client’s default to be entered, we also recommend restitution of the \$2500 advance fees paid by Vasquez. We further recommend the added element of protection by requiring that respondent comply with standard 1.4(c)(ii) prior to relief from actual suspension.

V. RECOMMENDATION

We recommend that respondent Kurt Kevin Robinson be suspended from the practice of law in the State of California for four years, that execution of that suspension be stayed, and that he be placed on probation for four years on the following conditions:

1. Respondent must be suspended from the practice of law for a minimum of the first two years of the period of his probation and he will remain suspended until he satisfies the following requirements:

- (i) restitution to Raul Vasquez in the amount of \$2500 plus 10% interest per annum from December 27, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Raul Vasquez, plus interest and costs, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof thereof to the State Bar's Office of Probation. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d); and
- (ii) proof satisfactory to 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) of the Standards for Attorney Sanctions for Professional Misconduct.

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

3. Respondent must maintain, with the State Bar Membership Records Office and the State Bar's Office of Probation in Los Angeles, his current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a)(1).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, his current home address and telephone number. (Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

4. Respondent must report, in writing, to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation (reporting dates). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and must certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

- (i) in the first report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and
- (ii) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (2) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

5. Subject to the proper or good faith assertions of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein.

6. Within one year after the effective date of the Supreme Court order in this matter, respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation in Los Angeles. This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing this course. (Accord, Rules Proc. of State Bar, rule 3201.)

7. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the end of the probationary term, if respondent has complied with the conditions of probation, the Supreme Court order suspending respondent from the practice of law for four years will be satisfied, and the suspension will be terminated.

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

We recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of respondent's 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.

VII. RULE 9.20

We recommend that respondent 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. Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal conviction.

VIII. 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.

PURCELL, J.

We concur:

REMKE, P. J.

EPSTEIN, J.