FILED DECEMBER 7, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **THOMAS SCOTT SIMONS,** **Member No. 226484,** A Member of the State Bar.	)	Case No.: **06-O-14505-PEM (06-O-15080-PEM)** **DECISION**

I. INTRODUCTION

This original disciplinary proceeding proceeded by default after respondent **THOMAS SCOTT SIMONS** failed to appear at trial, either in person or by counsel. (Rules Proc. of State Bar, rule 201(b).) In a multiple-count notice of disciplinary charges (NDC), the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges that, in two client matters, respondent repeatedly engaged in the unauthorized practice of law and committed acts involving moral turpitude. Deputy Trial Counsel Tammy M. Albertsen-Murray (DTC Albertsen-Murray) appeared for the State Bar.

For the reasons set forth *post*, the court finds that respondent is culpable of most of the charged misconduct and concludes that the appropriate level of discipline for the found misconduct is a three-year stayed suspension and a ninety-day actual suspension that will

continue until respondent makes and the State Bar Court grants a motion to terminate his actual suspension under Rules of Procedure of the State Bar, rule 205.

II. KEY PROCEDURAL HISTORY

The State Bar filed the NDC in this proceeding on May 8, 2008. The State Bar served respondent on May 7, 2008, by mailing a copy of the NDC to him at his latest address shown on the official membership records of the State Bar of California (official address) by certified mail, return receipt requested. (Bus. & Prof. Code, § 6002.1, subd. (c);[1] Rules Proc. of State Bar, rule 60(b).) That service was deemed complete when mailed even if respondent never received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; see also *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Respondent's response to the NDC was to have been filed no later than June 2, 2008. (Rules Proc. of State Bar, rule 103(a); see also Rules Proc. of State Bar, rule 63 [computation of time].) Respondent, however, did not file a response. And, on September 17, 2008, the State Bar filed a motion for the entry of respondent's default. Thereafter, respondent did not file a response to that motion or to the NDC. Accordingly, on October 6, 2008, the court filed an order in which it entered respondent's default and, as mandated by section 6007, subdivision (e)(1), ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California.

On January 16, 2009, respondent filed a motion seeking to set aside his default. On February 11, 2009, the State Bar filed a statement of non-opposition to that motion. And, at a status conference on March 2, 2009, the court granted respondent's motion; ordered respondent

[1] Unless otherwise noted, all further statutory references are to the Business and Professions Code.

to file his response to the NDC no later than March 13, 2009; and set this case for trial on August 19, 2009.

On March 9, 2009, respondent timely filed a response to the NDC. However, respondent thereafter never filed a pretrial statement (State Bar Ct. Rules of Prac., rules 1221, 1223) or exchanged exhibits with the State Bar (State Bar Ct. Rules of Prac., rule 1224). In addition, respondent failed to appear at: (1) the May 28, 2009 settlement conference; (2) the June 8, 2009 status conference; and (3) the August 3, 2009 pretrial conference. On August 19, 2009, respondent failed to appear at the trial, either in person or by counsel. Because all of the statutory and rule prerequisites were met, the court directed that respondent's default be entered under Rules of Procedure of the State Bar, rule 201. The court thereafter filed an order on August 24, 2009, in which it entered respondent's default.[2] In that same order, the court also ordered that respondent be involuntarily enrolled inactive effective August 27, 2009. (§ 6007, subd. (e).)

On August 21, 2009, the State Bar filed a closing brief and supporting declarations from DTC Albertsen-Murray and from DTC Robert Henderson. Then, on September 3, 2009, the State Bar filed an amended closing brief and an amended supporting declaration from DTC Albertsen-Murray.[3] The State Bar's September 3, 2009 amended closing brief and the State

[2] On August 14, 2009, the State Bar filed a motion for evidentiary sanctions against respondent. In that motion, the State Bar seeks an order precluding respondent from presenting any evidence or calling any witnesses at the trial in this disciplinary proceeding because, as noted *ante*, respondent failed to file a pretrial statement and failed to exchange his exhibits with the State Bar. As noted *ante*, respondent's default was entered after respondent failed to appear at trial on August 19, 2009. The entry of respondent's default effectively rendered the requested sanctions moot. Accordingly, the State Bar's motion for evidentiary sanctions is DENIED as moot.

[3] "Buried" on pages 6 and 7 of the State Bar's amended closing brief is a motion to strike respondent's response to the NDC. In that motion, the State Bar contends that the court should strike respondent's response because, according to the State Bar, "Respondent denied the State

Bar's September 3, 2009 amended declaration from DTC Albertsen-Murray supersede the closing brief and the declaration from Albertsen-Murray that the State Bar filed on August 21, 2009.

The court took this case under submission for decision on September 8, 2009.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings of fact are based on: (1) the well-pleaded factual allegations (not the legal contentions or the charges) set forth in the NDC, which allegations were deemed admitted by the entry of respondent's default (§ 6088; Rules Proc. of State Bar, rules 200(d)(1)(A), 201(c)); and (2) exhibits 1 through 15 to the September 3, 2009 amended supporting declaration from DTC Albertsen-Murray, which exhibits are admitted into evidence (Rules Proc. of State Bar, rule 202).

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on October 9, 2003, and has been a member of the State Bar of California since that time.

B. Respondent's Involuntary Inactive Enrollment and Actual Suspension

In 2005, respondent failed to report, to the State Bar, that he had satisfied his minimum continuing legal education (MCLE) requirements. Therefore, effective September 16, 2005, the State Bar involuntarily enrolled respondent as an inactive member of the State Bar. (Former Cal.

Bar's opportunity to examine him at trial" when he failed to appear at the trial in this proceeding. The only supporting authority cited in that motion to strike are unexplained "see" cites to Rules of Procedure of the State Bar, rules 152(a) and 201 and an unexplained "cf." cite to Rules of Procedure of the State Bar, rule 186. None of the cited rules supports or authorizes the relief requested in the motion to strike Moreover, the entry of respondent's default effectively vitiated the legal effect of respondent's response to the NDC. Accordingly, the State Bar's motion to strike respondent's response to the NDC is DENIED, no good cause having been shown. The court has also considered other requests for affirmative relief that are set forth in the State Bar's amended closing brief, and they are all DENIED either because they are unnecessary or because no good cause is shown.

Rules of Court, rule 958(d) [now Cal. Rules of Court, rule 9.31(d)] [attorney who fails to comply with the MCLE requirements must "be enrolled as an inactive member of the State Bar"]; former MCLE Rules & Reg., § 13.1 [now Rules of State Bar, rule 2.91(A)] [attorney who fails to comply with the MCLE requirements must "be enrolled as an inactive member"]; see also Rules of State Bar, rules 2.32(A), 2.91(A), 2.92 [attorney who fails to comply with the MCLE requirements will "be involuntarily enrolled as inactive"].)

On September 23, 2005, the State Bar's Office of Certification mailed, to respondent at his official address, a notice that he was no longer entitled to practice law because of his MCLE noncompliance.[4] Respondent actually received that notice. Respondent has continuously been involuntarily enrolled inactive for MCLE noncompliance from September 16, 2005, through at least May 5, 2008.

In 2006, respondent failed to pay his State Bar annual membership fees. Therefore, in an order filed on August 22, 2006, in case number S145875, the Supreme Court placed respondent on actual suspension effective September 15, 2006. On August 25, 2006, the State Bar's Membership Billing Services mailed, to respondent at his official address, a notice that, effective September 15, 2006, he would be placed on actual suspension in accordance with the Supreme Court's August 22, 2006 suspension order. Enclosed with that notice was a copy of the Supreme Court suspension order. Respondent actually received that notice and copy of the Supreme

[4] The Office of Certification's notice states that respondent had been "enrolled on not eligible status" under former MCLE Rules and Regulations section 13.1 (now Rules of State Bar, rules 2.91(A)). (Original underlining.) In the NDC, the State Bar does not allege that respondent was enrolled or placed "not eligible status." Instead, the State Bar alleges that "respondent was placed on 'not entitled' status." Respondent has not complained that he has been prejudiced by the Office of Certification's use of the term "not eligible status" or by the State Bar's use of the term "not entitled status." And there is no evidence or indication of any such prejudice in the record.

Court's suspension order. Respondent has continuously been on actual suspension under the Supreme Court's suspension order from September 15, 2006, through at least May 5, 2008.

In light of the fact that respondent actually received both the September 23, 2005 notice that he was no longer entitled to practice law because of his MCLE noncompliance and the August 25, 2006 notice that, effective September 15, 2006, he would be placed on actual suspension in accordance with the Supreme Court's suspension order, it is clear that respondent knew that he could not lawfully practice law from September 16, 2005, through at least May 5, 2008.

C. The Vaza-Kaczynski Client Matter

In October 2005, Elaine Vaza-Kaczynski (Vaza-Kaczynski) hired respondent to represent her in a marital dissolution proceeding that was pending in the San Mateo County Superior Court. Respondent, however, never filed a substitution of attorney with the superior court to substitute in as Vaza-Kaczynski's attorney of record.

Between September 16, 2005, and October 10, 2006, Vaza-Kaczynski paid respondent a total of $6,100 in attorney's fees.

On February 2, 2006, respondent filed, in the superior court, a declaration regarding notice of an ex parte application for orders against Vaza-Kaczynski's then husband, Edward Vaza-Kaczynski (Edward). In that declaration, respondent stated, under penalty of perjury, that he was counsel for Vaza-Kaczynski.

On February 8, 2006, respondent filed, in the superior court, a proof of service in which he stated, under penalty of perjury, that he personally gave Edward copies of Judicial Conference of California forms "DV-110 with DV-100 and a blank DV-120 (Temporary Restraining Order and Notice of Hearing; Request for Order; [and] blank Answer to Temporary Restraining Order)" at 1:00 p.m., on February 1, 2006.

Also, on February 8, 2006, respondent appeared as Vaza-Kaczynski's counsel at a superior court hearing on Vaza-Kaczynski's application for a restraining order against Edward. At that hearing, the superior court granted Vaza-Kaczynski's application and filed a restraining order against Edward.

On May 5, 2006, respondent filed, in the superior court, a proof of service in which he stated, under penalty of perjury, that he personally gave Edward a copy of a Judicial Conference of California form "DV-130 (Restraining Order After Hearing)" (i.e., a copy of the superior court's February 8, 2006 restraining order against Edward) at 1:00 p.m., on February 9, 2006.

On July 26, 2006, respondent filed, in the superior court, a proof of service of summons in which he listed himself as the attorney of record for Vaza-Kaczynski. And, on August 15, 2006, respondent filed an amended proof of service of summons in which he again listed himself as Vaza-Kaczynski's attorney of record in the superior court action. Then, sometime around September 2006, respondent ceased working for Vaza-Kaczynski.

Notwithstanding the statements in respondent's proofs of service that were filed in the superior court on February 8, 2006, and on May 5, 2006, respondent did not personally give, to Edward, the documents that are listed in those two proofs of service.

Count 1(A) – Failure to Comply with Laws (§ 6068, subd. (a))

In count 1(A), the State Bar charges that respondent willfully violated section 6068, subdivision (a), which requires that attorneys obey the laws of this state and of the United States. More specifically, the State Bar charges that respondent violated his duty, under section 6068, subdivision (a), to obey the laws of this state by engaging in the unauthorized practice of law (UPL) in violation of sections 6125 and 6126.

The record clearly establishes that respondent engaged in UPL in willful violation of sections 6125 and 6126 and that respondent thereby failed to obey the laws of this state in willful

violation of section 6068, subdivision (a) by agreeing, in October 2005, to represent Vaza-Kaczynski in the superior court action and by thereafter representing Vaza-Kaczynski at the February 8, 2006 hearing in that same action, all when respondent knew that he was not an active member of the State Bar.[5] (*In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 237; *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 487.)

Count 1(B) – Moral Turpitude (§ 6106)

In count 1(B), the State Bar charges that respondent violated section 6106, which proscribes acts involving moral turpitude, dishonesty, or corruption. The record clearly establishes that, when respondent knew he was not an active member of the State Bar, respondent deliberately held himself out as an attorney and entitled to practice law to Vaza-Kaczynski, Edward, and the San Mateo County Superior Court. Such deliberate misrepresentations involve moral turpitude, if not dishonesty, in willful violation of section 6106. (*Cadwell v. State Bar* (1975) 15 Cal.3d 762, 771.)

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[5] In count 1(A), the State Bar also charges that respondent engaged in UPL both by opining on the law to his client and by holding himself out as an attorney when he was not an active member of the State Bar. The record does not establish that respondent opined on the law to Vaza-Kaczynski at a time when he was not an active member of the State Bar; accordingly, the court cannot find respondent culpable on that UPL charge. Moreover, even though the record clearly establishes that respondent engaged in UPL by holding himself out as an attorney when he knew that he was not an active member of the State Bar, the court declines to find respondent culpable of that UPL charge in count 1(A) because the same misconduct is charged and found as a section 6106 violation in count 1(B), *post*. Even if the court were to find respondent culpable of engaging in UPL by holding himself out as an attorney as charged in count 1(A), the duplicative finding of misconduct would not affect the degree of discipline. (*In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.)

Count 1(C) – Illegal Fees (Rules Prof. Conduct, rule 4-200(A))[6]

In count 1(C), the State Bar charges that respondent violated rule 4-200(A), which prohibits attorneys from entering into an agreement for, charging, or collecting an illegal or unconscionable fee. Specifically, the State Bar charges that "By charging and collecting $6,100 in attorney's fees from Elaine Vaza-Kaczynski when respondent was not an active member of the State Bar, respondent willfully collected an illegal fee." To establish this violation, the State Bar must prove that the $6,100 in attorney's fees that Vaza-Kaczynski paid respondent were for legal services that respondent performed when he was not an active member of the State Bar.

Even though the record clearly establishes that Vaza-Kaczynski *paid* respondent a total of $6,100 in attorney's fees between September 16, 2005, and October 10, 2006, when respondent was not an active member of the State Bar, there is simply nothing in the record that suggests, much less establishes by clear and convincing evidence, that respondent *charged* or *collected* from Vaza-Kaczynski a fee for legal services that he performed when he was not an active member of the State Bar. In short, in light of the well-established principle that the court must resolve all reasonable doubts in the respondent's favor[7] and the fact that there is no evidence as to what these fees were for, the State Bar has failed to establish that respondent charged or collected an illegal fee in willful violation of rule 4-200(A), and count 1(C) is, therefore, dismissed with prejudice.[8]

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[6] Unless otherwise indicated, all further references to rules are to these Rules of Professional Conduct of the State Bar of California.

[7] "All reasonable doubts must be resolved in favor of the [respondent], and if equally reasonable inferences may be drawn from a proven fact, the inference which leads to a conclusion of innocence rather than guilt will be accepted. [Citation.]" (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.)

[8] In its amended closing brief, the State Bar cites to exhibit 8 as containing evidence supporting the rule 4-200(A) violation charged in count 1(C). Exhibit 8 consists of 24 pages of

Count 1(D) – Acts of Moral Turpitude (§ 6106)

In count 1(D), the State Bar charges that respondent willfully violated section 6106 when he filed the proofs of service in the superior court on February 8, 2006, and May 5, 2006. The record clearly establishes these charged violations. Respondent engaged in acts involving both moral turpitude and dishonesty in willful violation of section 6106 when he falsely stated, in those two proofs of service, that he had personally given the listed documents to Edward.

D. The Conciatore Client Matter

In 2006, Ms. R. Conciatore and Mr. R. Struckman were parties to a family law case involving child custody and visitation issues. The case was in the Santa Clara County Superior Court. In about July 2006, Conciatore employed respondent to represent her in that case.

On July 11, 2006, respondent sent Struckman an email in which respondent identified himself as Conciatore's attorney, opined on the law relating to the family law case, and asked Struckman to "substitute out" his old counsel so that communications could be directed to the appropriate person (presumably Struckman). The next day, respondent sent Struckman a second email.

In his second email to Struckman, respondent stated: "I have spoken with my client Ms. Conciatore. . . ." In addition, respondent stated: "I would like to remind you that if you do not make your children available tomorrow, July 13, 2006, then you are in continued violation of the custody agreement currently in effect, and my client, Ms. Conciatore, will take appropriate legal action."

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deposition testimony that respondent gave in an unrelated civil action. This court has reviewed those 24 pages, but found no evidence that materially supports the charged rule 4-200(A) violation.

On August 7, 2006, respondent sent Struckman a third email. In that third email, respondent again identified himself as an attorney and discussed Conciatore's legal position in the family law case.

On August 17, 2006, respondent submitted, to the superior court, a partially completed Judicial Counsel form FL-300 (order to show cause regarding child custody and support modification) in which respondent listed himself as Conciatore's attorney of record. (Ex. 12.)

Count 2(A) -- Failure to Comply with Laws (§ 6068, subd. (a))

In count 2(A), the State Bar again charges respondent with engaging in UPL in willful violation of sections 6068, subdivision (a), 6125, and 6126. The record clearly establishes that respondent engaged in UPL in willful violation of sections 6125 and 6126 and that respondent thereby failed to obey the laws of this state in willful violation of section 6068, subdivision (a) by agreeing to represent Conciatore in the family law case and by opining on the law to Struckman, all when respondent knew that he was not an active member of the State Bar.[9] (*In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. at p. 237; *In the Matter of Lilley, supra*, 1 Cal. State Bar Ct. Rptr. at p. 487.)

Count 2(B) – Acts of Moral Turpitude (§ 6106)

The record clearly establishes that respondent deliberately held himself out as an attorney and as entitled to practice law to Struckman and the superior court, all when respondent knew he was not an active member of the State Bar. Again, such deliberate misrepresentations involve

[9] In count 2(A), the State Bar also charges that respondent engaged in UPL both by holding himself out as an attorney to Struckman and by submitting, to the superior court, a partially completed form FL-300 in which respondent identifies himself as an attorney to Struckman and the superior court in the family law case, all when respondent knew that he was not an active member of the State Bar. Even though the record clearly establishes both of these UPL charges, the court declines to find respondent culpable of them under count 2(A) because the same acts of misconduct are charged and found to be section 6106 violations in count 2(B), *post*.

moral turpitude and dishonesty in willful violation of section 6106. (*Cadwell v. State Bar*, *supra*, 15 Cal.3d at p. 771.)

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

A. Factors in Mitigation

There are no mitigating circumstances.

B. Factors in Aggravation

Respondent's misconduct in this proceeding involves multiple acts of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std 1.2(b)(ii).)[10]

Respondent displayed a lack of cooperation to the State Bar and this court during these proceedings. Respondent's lack of cooperation is evidence that he fails to fully comprehend the seriousness of the charges against him and his duty as an officer of the court to participate in disciplinary proceedings. (Std. 1.2(b)(vi); cf. *Conroy v. State Bar* (1992) 53 Cal.3d 495, 507-508.)

The court rejects the State Bar's contention that respondent's misconduct caused significant harm to the administration of justice. There is no evidence to support a finding of significant harm to the public or the administration of justice that is separate and apart from the harm to the public and administration of justice that is inherent in unauthorized practice of law. Accordingly, no finding in aggravation based on such harm is appropriate. (Cf. *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 684; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 203; see also *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 240 [the harm to the public and administration of justice that is inherent in the unauthorized practice of law limited finding of lack of harm mitigation].)

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

V. DISCUSSION ON DISCIPLINE

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Ba*r (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylo*r (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for respondent 's misconduct is found in standard 2.3, which applies to respondent's multiple deliberate misrepresentations of his status as an attorney in willful violation of section 6106. Standard 2.3 provides:

> Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

The generalized language of standard 2.3 provides little guidance to the court. (*In re Brown* (1995) 12 Cal.4th 205, 220; *In re Morse* (1995) 11 Cal.4th 184, 206.) The sanction for engaging in the unauthorized practice of law has ranged from suspension to disbarment depending on whether other ethical violations are found, the existence of moral turpitude or dishonesty, and any aggravating or mitigating circumstances.

In its amended closing brief, the State Bar "seeks a minimum of three years suspension, stayed, including a minimum of one year actual suspension." To support its position on discipline, the State Bar cites to *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct.

Rptr. 563; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233; *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585; and *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343.

The court finds *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639 instructive on the level of discipline. In *Mason*, the attorney was placed on three years' stayed suspension and three years' probation with conditions, including a ninety-day actual suspension. In that case, the attorney engaged in the unauthorized practice of law and committed acts involving moral turpitude by making a court appearance for a client when he knew that he was suspended from the practice of law under a Supreme Court disciplinary order. In *Mason*, there were three aggravating factors: (1) one prior record of discipline involving serious misconduct; (2) multiple acts of misconduct; and (3) uncharged misconduct (i.e., the attorney signed and served a trial brief when he knew he was suspended and failed to disclose his suspension to opposing counsel and the court). In mitigation, the attorney in *Mason* had a record of extensive pro bono activities.

On balance, the court finds that the appropriate level of discipline to recommend in the present proceeding is three years' stayed suspension and ninety days' actual suspension continuing until respondent makes and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205).

VI. DISCIPLINE RECOMMENDATION

The court recommends that respondent **THOMAS SCOTT SIMONS** be suspended from the practice of law in the State of California for three years, that execution of the three-year suspension be stayed, and that he be actually suspended from the practice of law in this state for ninety days and until he makes and the State Bar Court grants a motion, under Rules of Procedure of the State Bar, rule 205, to terminate his actual suspension.

The court also recommends that, if his actual suspension in this matter continues for two years or more, **SIMONS** remain actually suspended from the practice of law until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

The court also recommends that **SIMONS** be ordered to comply with the conditions of probation, if any, hereinafter imposed on him by the State Bar Court as a condition for terminating his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

VII. MPRE, RULE 9.20 & COSTS

The court also recommends that **SIMONS** be ordered to 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 number (319) 337-1287) within one year after the effective date of the Supreme Court order in this matter or during the period of his actual suspension, which ever is longer, and to provide satisfactory proof of his passage of that examination to the State Bar's Office of Probation within that same time period. If respondent fails to take and pass the MPRE within the specified time period, he will be placed on actual suspension without a hearing and will remain on actual suspension until he passes the examination. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; see also Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rules 320, 321(a)&(c).)

The court further recommends that **SIMONS** 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.[11]

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: December ___, 2009.

PAT McELROY
Judge of the State Bar Court

[11] SIMONS is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) At least in the absence of compelling mitigating circumstances, an attorney's failure to comply with rule 9.20 almost always results in disbarment. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.)