PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of	)	**06-PM-10815**
	)	
DENNIS HARRY JOHNSTON	)	**OPINION ON REVIEW**
	)	
A Member of the State Bar.	)	
	)	

In this probation revocation proceeding for respondent, Dennis Harry Johnston, the Office of Probation of the State Bar (Office of Probation) seeks review of a hearing judge's discipline recommendation of 60 days' actual suspension with credit given for 49 days of inactive enrollment. The Office of Probation maintains that one year of actual suspension is the minimum appropriate discipline because respondent was late in filing ten of his first eleven quarterly probation reports. In addition, the Office of Probation contends that the hearing judge incorrectly found there was no competent evidence to establish respondent's non-compliance with his substance abuse monitoring program sponsored by the Lawyer Assistance Program of the State Bar of California ("the LAP").

Having independently reviewed the record (*In re Morse* (1995) 11 Cal.4th 184, 207), we adopt the hearing judge's discipline recommendations, with the exception that we recommend 120 days' actual suspension and compliance with California Rules of Court, rule 9.20. As we discuss below, a greater amount of actual suspension is warranted in light of the sheer number of late probation reports, and our finding that respondent failed to disclose in his quarterly report that the LAP had alerted him to his non-compliance with his substance abuse program. However, we believe the one-year actual suspension sought by the Office of Probation is

excessive, given respondent's willingness to continue with the substantial monitoring conditions imposed by the LAP, as well as his effort to address his alcohol addiction by agreeing to a 30-day inpatient and a 30-day outpatient treatment program.

I. FACTUAL AND PROCEDURAL BACKGROUND

With the exception of those facts relating to respondent's compliance with the terms of his treatment and monitoring by the LAP, the key facts underlying the hearing judge's findings of culpability are not disputed.

Respondent was admitted to practice in California on November 29, 1978. As the hearing judge recognized, "respondent has a very serious alcohol problem that is adversely affecting his private life." His disciplinary history began in November 2000 when he struck another car that was stopped at an intersection. Respondent caused about $7,500 in damage to that car and its driver sustained minor injuries. Respondent left the scene of the accident without providing his identifying information, but the other driver followed him home where the police arrived. Although initially uncooperative, respondent did subsequently cooperate with the driver and the police. The driver sued and recovered her medical expenses from respondent's insurance carrier. At the time of this accident, respondent's blood alcohol level was determined to be 0.15 %. Ultimately, respondent pled guilty to driving under the influence with a blood alcohol of 0.08% or more and hit-and-run with property damage.

In February 2001, respondent was again involved in an alcohol-related driving incident. In this latter instance, he slid through a traffic signal into an intersection, which was observed by a police officer who, fortuitously, was stopped at the intersection. After respondent backed his car out of the intersection in a reckless manner, he was asked to submit to a field sobriety test, which he failed. He was then arrested and transported to the police station. Respondent's blood alcohol level was 0.17%, which is more than twice the legal limit. As a result of this incident,

respondent pled guilty to driving under the influence with a blood alcohol of 0.08% or more and driving with a suspended license.

In addition, respondent stipulated that he also had been convicted of driving under the influence in 1985 and 1990, and in both of those instances, his blood alcohol level was 0.21% at the time of his arrest. In October 1994, respondent was arrested for public intoxication. He pled nolo contendere to the latter charge, but it was dismissed after respondent attended 20 meetings of Alcoholics Anonymous.

After his 2000 and 2001 convictions were referred to this court, the Supreme Court ordered on October 3, 2003 that respondent be placed on two years' suspension and until he showed satisfactory proof of his fitness to practice in accordance with standard 1.4(c)(ii),[1] stayed, and subject to five years' probation with conditions, but no actual suspension. Among the conditions of his probation were the requirements that respondent file quarterly reports with the Office of Probation and that, upon his acceptance into the LAP program, he comply with all substance abuse and monitoring conditions required by the LAP and "furnish satisfactory evidence of such compliance to the [Office of Probation]."

On February 17, 2006, the Office of Probation filed a Motion to Revoke Probation pursuant to Business and Professions Code section 6093, subdivisions (b) and (c), and Rules of Procedure of the State Bar, rules 560 et seq.,[2] charging respondent with violation of his probation conditions requiring timely filing of quarterly reports and compliance with the terms of his Participation Agreement with the LAP. Respondent failed to timely file his response and, accordingly, on April 12, 2006, the hearing judge entered respondent's default, granted the

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[1]The Standards for Attorney Sanctions for Professional Misconduct are found in title IV of the Rules of Procedure of the State Bar. All further references to "standard(s)" are to this source.

[2]Unless otherwise indicated, all further references to "rule(s)" are to these Rules of Procedure of the State Bar.

Motion to Revoke Probation and ordered him inactively enrolled. Respondent was suspended from April 12, 2006 through May 30, 2006. However, on May 31, 2006, the hearing judge granted respondent's Motion to Vacate the Order of Suspension because the Office of Probation had served respondent at his official address but not at his alternate address, despite knowing that respondent received mail at the alternate address. The court found that the Office of Probation could not ignore that information, citing *Jones v. Flowers* (2006) 547 U.S. 220, 237 [126 S. Ct. 1708] (Jones).[3]

Thereafter, respondent was again served with the Motion to Revoke Probation and subsequently filed his Opposition and Evidentiary Objections. After a two-day hearing, which commenced on July 20, 2006, and submission of the matter, the hearing judge found that the Office of Probation proved by a preponderance of the evidence[4] that respondent willfully violated the conditions of his probation in failing to timely file eight of his first nine quarterly probation reports. The judge further found respondent filed his 10th and 11th reports late, but these untimely reports were not charged in the revocation notice, so the hearing judge considered them in aggravation as uncharged misconduct. While some of the reports were tardy by only a few days, several were between 10 and 79 days late.

The hearing judge further found that there was no competent evidence establishing that respondent had failed to comply with his substance abuse monitoring program with the LAP, and he therefore dismissed with prejudice the allegations relating to this probation condition.

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[3]We decline to address the applicability of the *Jones v. Flowers* decision because the issue of proper service is moot. Respondent was re-served as ordered by the hearing judge, and thereafter the matter proceeded to a hearing and final decision. As to the Office of Probation's request that we modify the language in the hearing judge's decision that it "knew" respondent had moved from his official address, on this record, we can only speculate as to the Office of Probation's knowledge of respondent's actual address.

[4] Preponderance of the evidence is the required evidentiary standard for probation revocation proceedings. (See Bus. & Prof. Code, § 6093, subd. (c).)

The judge found respondent's prior record of discipline, which he described as "an extensive history of being arrested on alcohol related matters," was serious aggravation pursuant to standard 1.2(b)(i). As additional aggravation, he found multiple acts of misconduct (std. 1.2(b)(ii)) and uncharged but proven misconduct for the two late quarterly reports not identified in the Motion to Revoke Probation and for the failure to update his official address with the Membership Records Office and the Office of Probation.

The judge found no factors in mitigation.

The court recommended that respondent's probation be revoked, that the previous stay of execution of the two-year suspension be lifted, that respondent be suspended for twenty-two months, stayed, that he be placed on a new five-year period of probation on the condition of sixty days' actual suspension, with credit given for his previous 49 days of inactive enrollment, and that he take and pass the Multistate Professional Responsibility Examination.

II. DISCUSSION

A. Delinquent Probation Reports

On appeal, respondent does not dispute his many delinquent probation reports, but instead offers various excuses for his tardiness, including his belief that his communications with the LAP also satisfied his duty to report his compliance with his drug-monitoring program to the Office of Probation. The hearing judge did not accept his explanations, and neither do we.

Without question, the filing of quarterly probation reports plays an important role in the rehabilitative process. "At a minimum, quarterly probation reporting is an important step towards an attorney probationer's rehabilitation because it requires the attorney, four times a year, to review and reflect upon his professional conduct . . . . In addition, it requires the attorney to review his conduct to ensure that he complies with all of the conditions of his

disciplinary probation." (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.)

Respondent's endemic late filing of his quarterly reports is thus of great concern, and we find his numerous delinquent filings constituted willful probation violations. The law does not require bad faith (a bad purpose or evil intent) to support a willful violation of probation conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.) Indeed, "[w]ilfulness for purposes of probation revocation (and other disciplinary) proceedings is simply a general purpose or willingness to commit an act or to make an omission; it does not require any intent to violate . . . the probation condition and does not necessarily involve bad faith. [Citations.]" (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309.)

B. Compliance with the LAP Program

Much of the hearing below focused on the admissibility of evidence offered by the Office of Probation to establish that respondent was not in compliance with the LAP program due to two positive drug tests and his failure to return telephone calls to his LAP case manager within 24 hours. The hearing judge found that the results of the two "dirty" drug test were inadmissible hearsay, which could not be cured by the testimony of Cheryl Chisholm, Probation Deputy, because she did not have personal knowledge of the manner in which these tests were conducted and therefore could not establish their reliability and accuracy. The Office of Probation provided two additional witnesses, Janice Thibault, the director of the LAP, and Dr. Alex Yufik, respondent's case manager at the LAP, who testified that respondent's urine samples had tested positive and that he had not timely returned the LAP telephone calls. The Office of Probation offered this evidence to impeach respondent's prior testimony that he was in full compliance with his LAP program. But the hearing judge refused to admit most of Thibault's and Yufik's

testimony, finding it was precluded by rule 563[5] because they had not initially submitted declarations attached to the Motion to Revoke Probation. The hearing judge further found that Thibault and Yufik did not have personal knowledge of the procedures used to ensure the accuracy and reliability of respondent's drug tests.

We believe the judge missed the evidentiary mark. First of all, we find that rule 563(a) does not preclude the admission of impeachment testimony, even if the witnesses offering such testimony did not provide declarations attached to the initial revocation motion. Yufik's testimony was properly offered to impeach respondent's testimony that the LAP had never notified him that he had failed to return phone calls within 24 hours.[6]

Furthermore, we find that the positive drug tests were admissible, not for the truth of the results stated therein, but rather for the purpose of establishing that the LAP had determined on the basis of these tests that respondent was not in compliance with its substance abuse program and that it had notified respondent that it intended to take action as a result. The evidence is relevant to show respondent's knowledge of his problematic status with the LAP program and, given this knowledge, that he willfully withheld this information from the Office of Probation. Even without Thibault's and Yufik's testimony, respondent's own testimony and his two declarations – which were admitted into evidence in lieu of testimony – established that the LAP had determined from the positive drug tests that respondent was not in compliance with its substance abuse program and that the LAP had notified him that it planned to take action.

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[5]Rule 563(a) provides in relevant part: "The [revocation] proceeding shall be initiated by the filing of a motion to revoke probation, which shall be accompanied by one or more declarations setting forth all facts relied on in support of the motion. . . . The motion and all supporting pleadings and evidence . . . shall be served on the respondent pursuant to the rule for service of initial pleadings (rule 60)."

[6]Yufik obviously would have personal knowledge of the unreturned phone calls since he initiated the telephone communications with respondent.

In his declaration filed in the hearing department on June 27, 2006, in support of his response to the Motion to Revoke Probation, respondent avers under penalty of perjury: "On or about January 30, 2006, I met with the Evaluation Committee of the [LAP]. During that meeting, I was advised that the Committee had received two positive random urine tests from the samples. I requested the right to take the samples or test results to be analyzed by an independent laboratory, but the Committee replied that I could not have such tests conducted.[7] Furthermore, I was advised by the Committee that if I wanted to maintain my active status with the State Bar, I would be required to check into a State Bar approved residential care facility program. . . . ¶ I thereafter enrolled and entered a thirty (30) day in-patient lock down program, followed by a thirty (30) day assisted recovery program, which I have completed." When a declaration in lieu of testimony is admitted into evidence without limiting the purpose for which it was admitted, the declaration is admissible for all purposes, including the truth of the hearsay statements contained therein. (*In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 388, fn 5.)

As a condition of his probation, respondent stipulated that he would "furnish satisfactory evidence of such compliance [with the LAP program] to the Probation Unit." In our view, this duty included the disclosure of his uncertain status with the LAP (including his efforts to ameliorate his non-compliance by agreeing to a 30-day residential treatment program). Instead, after he had been notified by the LAP that he had tested positive on two urine samples and was required to meet with the LAP's Evaluation Committee, respondent filed his quarterly probation report (that was due April 10, 2006) on May 15, 2006, stating, under penalty of perjury: "During

[7]Dr. Yufik testified that because respondent questioned the test results, the matter was reviewed by the LAP's medical director, who found the results to be accurate.

the proceeding [sic] calendar quarter, I have complied with all the terms and condition of the Lawyer Assistance Program of the State Bar of California."

It is expected that statements in respondent's probation report about the status of his compliance with his substance abuse program should be clear and unequivocal. (*In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244, 252-253.) Respondent created a false impression that he had unconditionally complied with all of the terms of his monitoring program. (See *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9, 15; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90-91.)

We thus agree with the Office of Probation that it established by a preponderance of the evidence that respondent violated a condition of his probation by failing to report his non-compliance with the terms of the LAP monitoring program.

C. Aggravation

1. Prior record of discipline

The hearing judge properly considered respondent's prior discipline to be a serious aggravating circumstance. As the judge observed: "respondent's repeated criminal conduct and its surrounding circumstances, which include driving with a suspended license, are strong evidence that respondent lacks respect of the rights of others and for the legal system and that respondent has a very serious alcohol problem that is adversely affecting his private life." We note too, that one of respondent's probation violations is related to his past infractions for driving under the influence of alcohol. Ordinarily, the closer the nexus between previous misconduct and the present probation violation, the greater the degree of discipline that is warranted. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 528, 531.) As such, we assign significant weight in aggravation to respondent's prior disciplinary record. (Std. 1.2(b)(i).)

2. Multiple acts of misconduct and repeated requests to comply

We agree with the hearing judge's finding in aggravation that respondent committed multiple acts of misconduct. (Std. 1.2(b)(ii).) We simply cannot ignore that respondent was late with the majority of his probation reports. As a consequence, the Office of Probation was required to contact respondent on at least six occasions. The repeated need for the Office of Probation to intervene "to seek respondent's compliance with duties he voluntarily undertook was inconsistent with the self-governing nature of probation as a rehabilitative part of the attorney disciplinary system." (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.) We therefore find this is an additional aggravating circumstance.

3. Uncharged misconduct

We adopt the hearing judge's finding, which is supported by a preponderance of the evidence, that respondent failed to timely file two quarterly reports in addition to the eight late reports charged in the Motion to Revoke Probation. We further agree with the hearing judge that, although not charged as a probation violation, respondent intentionally did not report the change of his official address, purportedly because of threats due to a pending divorce proceeding. The hearing judge properly considered respondent's failure to update his official address, as well as the two additional late reports, as uncharged but proven misconduct in aggravation. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36; std. 1.2(b)(iii).) We are particularly troubled that the last two untimely reports were filed *after* the Motion to Revoke Probation, which put respondent on notice that his probation status was in jeopardy.

4. Bad Faith

Finally, the hearing judge was unwilling to find as an aggravating circumstance under standard 1.2(b)(iii) that respondent's conduct was surrounded by bad faith, dishonesty or concealment. On appeal, the Office of Probation does not challenge this finding, and on our

independent review, we agree with the hearing judge's determination. Respondent's assertion in his probation report that he was in full compliance with the LAP program should not be considered as a separate and independent basis of aggravation since, to a great extent, the non-disclosure was an inherent element of the underlying probation violation. (*In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76.)

D. Mitigation

The hearing judge found that respondent did not prove mitigating circumstances. However, we believe that some mitigative credit should be given for respondent's successful completion of a 30-day residential treatment program, followed by a 30-day outpatient treatment program. This is not an insubstantial commitment by respondent and demonstrates, to a certain degree, his willingness to take rehabilitative steps in recognition of his alcohol addiction. (Std. 1.2(e)(vii).) We also observe that there has been no reported client harm to date. (Std. 1.2(e)(iii).)

III. LEVEL OF DISCIPLINE

In determining the appropriate discipline, we start with the fundamental proposition that the aims of attorney disciplinary probation are protection of the public and rehabilitation of the attorney. (*In the Matter of Hunter, supra*, 3 Cal. State Bar Ct. Rptr. at p. 78.). This case is to some extent sui generis in that respondent's alcohol addiction lies at the heart of both his underlying misconduct and one of his probation violations, yet he has agreed to participate in an extended substance abuse program sponsored by the LAP. Thus, our concern for protection of the public and the profession is somewhat assuaged because respondent will be under the watchful eye of the LAP for another five years, during which he will be required to comply with its monitoring and substance abuse conditions. Moreover, the Office of Probation also will have oversight of his probation compliance for five more years. Thus, as the hearing judge observed,

respondent will have ample opportunity during this probationary period "to demonstrate that he is now willing and capable of fully engaging in the rehabilitative process by strictly complying with the probation conditions that were originally imposed on him under the Supreme Court's October 3, 2003, order . . . ."

"[T]here has been a wide range of discipline imposed for probation violations from merely extending probation . . . to a revocation of the full amount of the stayed suspension and imposition of that amount as an actual suspension." (*In the Matter of Gorman, supra*, 4 Cal. State Bar Ct. Rptr. 567, 573.)[8] Among the probation cases, we find that *In the Matter of Carr, supra,* 2 Cal. State Bar Ct. Rptr. 244, is particularly apt since it dealt with many of the same issues that are present here. In *Carr*, the Supreme Court initially placed an attorney on two years' probation with six months' actual suspension as the result of two DUI convictions. His probation conditions required that he file quarterly reports that would include a statement that he had abstained from consuming alcohol and illegal non-prescription drugs.

The attorney's first two quarterly reports did not contain a statement about his abstention, but instead included the assertion that he had complied with the State Bar Act and " 'other valid, legally reasonable and enforceable terms and conditions of my probation . . . .' " (*Id.* at p. 250.) The attorney was notified that his statements were inadequate, but did not amend his reports. On appeal, the attorney argued that his quarterly reports satisfied his probationary conditions (*id.* at p. 251), but we found a willful probation violation because "the language of the reports did not constitute a clear and unequivocal statement of respondent's compliance with the abstinence

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[8]Indeed, violations of probation conditions often result in more serious discipline than that imposed for the same misconduct in an original proceeding. (See e.g., *In the Matter of Carr, supra,* 2 Cal. State Bar Ct. Rptr. 108 [two violations for driving with suspended license and a DUI/PCP conviction with three priors resulting in six months' actual suspension and until 1.4(c)(ii)]; *In re Kelley* (1990) 52 Cal.3d 487 [two DUIs resulting in public reproval]; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208 [60 days' actual suspension for four DUIs with two prior records of discipline].)

condition. [Fn. omitted.]" (*Id.* at pp. 252-53.) Here, too, respondent's statement in his quarterly report that he had fully complied with the LAP's requirements did not provide the State Bar with the information it needed to evaluate whether respondent had satisfied a significant condition of his probation, i.e., participation in a substance abuse program. Thus, our observation in *Carr* applies as well to this matter: "Respondent's priors . . . when combined with the misconduct in this case, show both a persistent problem with . . . alcohol and a persistent problem with conforming his conduct to the requirement of law and of court orders." (*Id.* at p. 258.)

But, *Carr* is distinguishable because it involved three prior disciplinary proceedings, one of which included six months' actual suspension and another was a revocation matter. The attorney also had a far more extensive and prolonged history of alcohol and drug abuse. We recommended revoking the attorney's probation and imposing the entire previously stayed two-year suspension as actual suspension primarily because of the lack of evidence that the attorney had taken any steps toward rehabilitation from his addiction. "The absence of such evidence is significant since the probation violation at issue here involves respondent's failure to give the State Bar adequate assurance of his compliance with a very significant probation requirement that he abstain from alcohol and drugs." (*Ibid.*) In the instant case, our concern with respondent's sobriety is tempered by the evidence that he has undertaken rehabilitative steps, including his completion of a 30-day inpatient treatment program at Cornerstone, a State Bar-approved private addiction clinic, which was followed by an intensive 30-day outpatient treatment with the clinic. Respondent subsequently entered into a continuous care program sponsored by Cornerstone.

We also consider three cases which involve the failure to timely file quarterly probation reports: *In the Matter of Tiernan, supra,* 3 Cal. State Bar Ct. Rptr. 523, *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, and *In the Matter of Hunter, supra*, 3 Cal.

State Bar Ct. Rptr. 81. All of these cases resulted in one-year actual suspensions, but they also encompassed additional serious misconduct and, most significantly, willful failure to cooperate, which raises a serious concern when a respondent's suitability as a candidate for further disciplinary probation is at issue.

In *Tiernan*, the attorney willfully failed to cooperate with his probation monitor and submitted three untimely probation reports. (*Id.* at p. 530.) The disciplinary history in *Tiernan* was far more serious than in this case as Tiernan was involved in four prior proceedings, including an earlier probation revocation for failure to file his probation reports and an actual suspension for 11 months.

In the Matter of Howard, supra, 2 Cal. State Bar Ct. Rptr. 445, is another probation revocation case for an attorney's failure to file two quarterly probation reports. The attorney also did not return a former client's financial records, which prevented the client's accountant from assessing whether disciplinary restitution was appropriate. Again, an important concern in *Howard*, which is not present here, was the attorney's utter lack of cooperation with the State Bar, as evidenced by his default and his failure to turn over his client's records and files despite being ordered to do so both by the superior court in a malpractice case filed against him and by the Supreme Court. (*Id.* at p. 452.) In fact, the attorney failed to demonstrate compliance with *any* of the requirements of the Supreme Court's disciplinary order. (*Ibid.*)

In *In the Matter of Hunter, supra,* 3 Cal. State Bar Ct. Rptr. 81, the attorney initially received a one-year suspension, stayed, and a 30-day actual suspension with a three-year probation for misappropriating settlement funds and failing to hold certain other funds in trust. Subsequently, he violated conditions of his probation in two respects: 1) he failed to pay approximately $1,166.50 of a total of $1,766 in restitution despite repeated reminders from the State Bar; and 2) he filed his initial quarterly probation report three months late. In aggravation,

we found that two of his quarterly reports were defective and that he was indifferent to rectifying the harm caused by his failure to pay restitution. (*Id.* at p. 87.) Finally, we found that he was uncooperative because he failed to comply with even the most basic pretrial procedures in the hearing below. (*Ibid.*)

In the Matter of Laden (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, informs our discipline analysis because it involved more serious probation violations, and it resulted in an actual discipline of 90 days. But, in the *Laden* case, there was overwhelming evidence in mitigation. Thus, the attorney's 19 untimely monthly restitution payments and seven delinquent probation reports were ameliorated by a change in the management of his law practice, financial hardship, cooperation and candor with the victim, community service, recognition of the nature of his misconduct, and, most importantly, belated but full satisfaction of all probation conditions. We observed that the attorney's "successful struggle to ultimately meet his obligations in spite of substantial financial hardship reflects a positive attitude toward his probation and demonstrates his understanding of the rehabilitative and public policy goals of disciplinary probation. [Citation.]" (*Id.* at p. 684.)

Our review of decisional law confirms the sui generis nature of this matter. Having considered the facts and circumstances that are unique to this case, as well as the mitigating and aggravating evidence (*In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 299), we adopt the hearing judge's disciplinary recommendation, other than the 60-day actual suspension, which we believe is insufficient to achieve the goals of attorney disciplinary probation. Instead, we recommend that respondent's actual suspension be increased to 120 days. In reaching this conclusion, we have taken into account the absence of harm to clients, respondent's belated but complete satisfaction of his reporting conditions, and his continued supervision by the LAP and the Office of Probation for a five-year period. The need to protect

the public by imposing a significantly longer period of actual suspension is therefore diminished while the opportunity for attorney rehabilitation is enhanced.

IV. RECOMMENDATION

We adopt the recommended discipline of the hearing judge as set forth in his decision filed on March 12, 2007, with the exception that we recommend that respondent be suspended for 24 months, stayed, and that he be actually suspended for 120 days, with credit given for 49 days of inactive enrollment.

V. RULE 9.20

We further 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 thirty (30) and forty (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.

EPSTEIN, J.

We concur:

REMKE, P. J.

WATAI, J.

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 7, 2008, I deposited a true copy of the following document(s):

OPINION ON REVIEW FILED FEBRUARY 7, 2008

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

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

ERICA A. TABACHNICK
900 WILSHIRE BLVD #1000
LOS ANGELES, CA 90017

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

TERRIE L. GOLDADE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 7, 2008**.

Rosalie Ruiz
Case Administrator
State Bar Court