FILED AUGUST 25, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **DRAGO CAMPA,** **Member No. 170057,** A Member of the State Bar.	)	**Case Nos.: 07-O-10063-RAH** (07-O-10174) **08-H-10443-RAH** **(Consolidated.)** **DECISION**

1. INTRODUCTION

In this original disciplinary proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (hereafter "State Bar") charges respondent **DRAGO CAMPA**[1] with a combined total of nine counts of professional misconduct in two separate client matters together with two counts of failing to cooperate in State Bar disciplinary investigations and two counts of failing to comply with the conditions attached to the private reproval, which was imposed on him in 2006.

Even though the record establishes that respondent is culpable on each of the 13 counts, the record does not establish that respondent is culpable of every violation charged in the 13 counts. As noted below, the court dismisses with prejudice a number of the charged violations

[1] Respondent was admitted to the practice of law in the State of California on April 8, 1994, and has been a member of the State Bar of California since that time.

because the charged violations either were not proved by clear and convincing evidence or are duplicative. Moreover, as discussed below, the court finds that the appropriate level of discipline for the found misconduct includes three years' stayed suspension and eighteen months' suspension that will continue until respondent makes and the State Bar Court grants a motion to terminate his suspension (Rules Proc. of State Bar, rule 205).

Deputy Trial Counsel Ashod Mooradian (hereafter "DTC Mooradian") appeared for the State Bar. Respondent failed to appear either in person or by counsel.

2. KEY PROCEDURAL HISTORY

Before the State Bar initiated this disciplinary proceeding by filing the notice of disciplinary charges (hereafter "NDC") and at the request of both parties, the State Bar Court set an early neutral evaluation conference for February 27, 2009. However, that conference was never held because respondent failed to appear on February 27, 2009. Thereafter, on February 27, 2009, the State Bar filed the NDC in this proceeding and properly served a copy of it on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar (hereafter "official address"). (Bus. & Prof. Code, § 6002.1, subd. (c);[2] Rules Proc. of State Bar, rule 60(b).)

On March 3, 2009, the State Bar received, from the United States Postal Service (hereafter "Postal Service"), a return receipt (i.e., a green card) for the copy of NDC that was served on respondent. That return receipt establishes that the copy of the NDC that was mailed to respondent at his official address was actually delivered there on March 2, 2009.

Respondent's response to the NDC was due no later than March 24, 2009. (Rules Proc. of State Bar, rule 103(a); see also Rules Proc. of State Bar, rule 63 [computation of time].)

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

Respondent failed to file a response. Accordingly, on April 13, 2009, the State Bar filed a motion for the entry of respondent's default and properly served a copy of that motion on respondent at his official address by certified mail, return receipt requested. Respondent, however, never filed a response to that motion or to the NDC.

The declaration of DTC Mooradian, which is an exhibit to the State Bar's April 13, 2009, motion for entry of default, establishes that, in addition to performing its statutory duty to serve a copy of the NDC on respondent at his official address by certified mail, DTC Mooradian telephoned respondent at his law firm (i.e., Contreras & Campa) on April 9, 2009, and again on April 13, 2009. Each time, DTC Mooradian left, with respondent's receptionist, a message for respondent in which DTC Mooradian identified himself as a Deputy Trial Counsel with the State Bar and requested that respondent call him back immediately because the State Bar intended to file a motion for the entry of respondent's default in a disciplinary proceeding in the State Bar Court. Respondent, however, never returned DTC Mooradian's two telephone calls. It is clear that respondent was given adequate notice of this proceeding. (§ 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.)

Because all of the statutory and rule prerequisites were met and because respondent was given adequate notice of this proceeding, this court filed an order on April 29, 2009, in which it entered respondent's default and, as mandated by section 6007, subdivision (e)(1), ordered that he be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of the order by mail (i.e., May 2, 2009.[3]

[3] It is a crime for an attorney on inactive enrollment to practice law in this state. (§ 6126, subd. (b).)

On May 27, 2009, the State Bar filed a request for waiver of hearing and brief on culpability and discipline. That same day, the court took this consolidated matter under submission for decision without a hearing.

3. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Fakhoury Client Matter

In about May 2001, Sayel Fakhoury retained respondent to recover payment on a medical lien from Attorney James F. Jordan. Later that same month, respondent filed a lawsuit against Attorney Jordan on behalf of Fakhoury in the Los Angeles County Superior Court (hereafter "Fakhoury lawsuit").

In August 2003, the superior court held a status conference in the Fakhoury lawsuit. Respondent, however, did not appear; instead, he sent Attorney Vladimir Sigur in his place. At the conference, the superior court set the matter for a postmediation status conference on September 5, 2003. Attorney Sigur notified respondent of the September 5, 2003, postmediation status conference.

On September 2, 2003, the parties went to mediation, but did not reach an agreement. Respondent thereafter failed to appear at the September 5, 2003, postmediation status conference. He did, however, telephone the superior court and notify it that he was unable to appear because he was engaged in court in Glendale.

The superior court set the matter for a final status conference on February 18, 2004, and for trial on March 3, 2004. The superior court also ordered that all trial counsel and their clients (or adjustors) were to appear at the final status conference and that the parties were to file, at least five days before the final status conference (i.e., February 13, 2004), trial briefs, a joint statement of the case, witness lists, exhibit lists, a joint list of jury instructions, and joint verdict

forms. Respondent received notice of the final status conference and of the superior court's orders.

In February 2004, defendant's counsel left about 12 to 15 telephone messages for respondent regarding the Fakhoury lawsuit. Respondent, however, failed to respond to any of those messages. In addition, on February 4, 2004, defendant's counsel sent respondent a letter requesting that respondent contact him to discuss the preparation of the court-ordered joint pretrial documents. Even though respondent received that letter, he did not respond to it. Later in February 2004, defendant's counsel sent respondent a letter inquiring whether respondent still intended to try the Fakhoury lawsuit. Respondent, however, did not respond to that letter.

On the morning of the February 18, 2004, final status conference, respondent's assistant faxed defendant's counsel a letter at about 7:13 a.m. in which she stated that respondent would not appear at the final status conference because he was in trial in another court.

Respondent never sought a continuance of the February 18, 2004, final status conference. Thus, when respondent failed to appear at the final status conference, the superior court issued an order to show cause (hereafter "OSC") directing respondent to show why sanctions, including dismissal of the lawsuit, should not be imposed on plaintiff for failing to appear. The superior court set the OSC for a hearing on March 3, 2004, and ordered that the matter remain set for trial on March 3, 2004. The superior court clerk served notice of the OSC hearing and trial date on respondent by mail. Respondent received that notice.

Respondent never filed or served any of the court-ordered pretrial documents. Nor did respondent ever file a response to the OSC. Moreover, respondent failed to appear at either the OSC hearing or the trial on March 3, 2004. Respondent never sought a continuance of the OSC hearing or the trial. Even though the superior court clerk verified that respondent was engaged in trial in another lawsuit on March 3, 2004, the court ordered respondent to pay defendant's

counsel $1,364 in sanctions for that counsel's appearances at the final status conference, the OSC hearing, and the trial. In addition, the superior court dismissed the Fakhoury lawsuit for respondent's failure to appear at the OSC hearing and awarded costs to defendant. The superior court clerk served, on respondent by mail, copies of the superior court's March 3, 2004, minute order and dismissal order. Respondent received the copies of those orders.

On March 11, 2004, defendant's counsel sent respondent a written demand for payment of the $1,364 sanction. Respondent did not pay the $1,364 sanction. Nor did respondent ever report the $1,364 sanction to the State Bar.

On March 12, 2004, defendant filed a motion for attorney's fees. Defendant had previously served a copy of that motion on respondent on March 10, 2004, which respondent received. Respondent failed to file a response to defendant's motion for attorney's fees. The superior court set defendant's motion for attorney's fees for a hearing on April 20, 2004. When respondent failed to appear at that April 20 hearing, the superior court granted defendant's motion and awarded defendant $7,110 in attorney's fees.

On September 2, 2004, respondent filed a motion to vacate the superior court's dismissal of the Fakhoury lawsuit, which motion asserted grounds of mistake, inadvertence, and excusable neglect under Code of Civil Procedure section 473, subdivision (b).[4] Respondent's assistant purportedly served a copy of respondent's motion to vacate on defendant's counsel by mail on August 30, 2004. Defendant's counsel, however, never received a copy of respondent's motion to vacate. The superior court set respondent's motion to vacate for a hearing on November 2, 2004.

[4] September 2, 2004, was the next to the last day of the six-month period for bringing a motion under section 473, subdivision (b).

On November 2, 2004, defendant's counsel did not appear at the hearing on respondent's motion to vacate because he did not receive notice of the hearing. The superior court granted respondent's motion and vacated its dismissal of the Fakhoury lawsuit. Also, on November 2, 2004, superior court clerk served, on defendant's counsel, notice of the court's ruling on respondent's motion.

After defendant's counsel received the clerk's notice of the court's ruling on respondent's motion to vacated, defendant's counsel left multiple messages for respondent for over two weeks. In his messages, defendant's counsel requested that respondent immediately provide him with copies of the papers respondent filed in connection with the November 2, 2004, hearing. Respondent, however, failed to respond to any of the messages left by defendant's counsel. Thus, on November 24, 2004, defendant's counsel sent respondent a letter repeating his request for copies of the papers respondent filed in connection with the November 2, 2004, hearing. Even though respondent received that letter, he failed to respond to it.

Then, on February 1, 2005, defendant filed a motion to vacate the superior court's November 2, 2004, ruling on respondent's motion to vacate. Defendant's motion to vacate was based on the fact that defendant's counsel never received notice of respondent's motion to vacate or the November 2, 2004, hearing on that motion. On March 1, 2005, respondent filed an opposition to defendant's motion to vacate.

At a March 2, 2005, hearing, the superior court granted defendant's motion to vacate; vacated its November 2, 2004 ruling on respondent's motion; and reinstated its March 3, 2004, dismissal order.

In December 2005, defendant's counsel submitted a writ of execution to the superior court. And, on November 27, 2006, Fakhoury's bank sent Fakhoury a letter with a copy of a notice of levy and writ of execution for $8,744 by the sheriff's department. Then, on December

8, 2006, the bank withdrew the $8,774 from Fakhoury's account and sent it to the sheriff's department in accordance with the writ of execution.

After Fakhoury received the banks letter, he left numerous messages for respondent in about December 2006 in which he asked respondent for an explanation. Respondent, however, failed to respond to Fakhoury's messages.

On February 6, 2007, and then again on February 28, 2007, a State Bar investigator mailed, to respondent, a letter in which the investigator asked respondent to respond in writing to specific allegations of misconduct that Fakhoury had made against respondent. On March 16, 2007, the investigator telephoned respondent, and respondent confirmed that he had received the investigator's two letters and promised to respond to the letters by April 3, 2007. Respondent, however, never responded to the letters.

Count 1 – Failure to Perform (Rules Prof. Conduct, rule 3-110(A))[5]

In count 1, the State Bar charges that respondent willfully violated rule 3-110(A), which provides: "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." Specifically, the State Bar charges:

> Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, as follows:
>
> a. by not providing representation for Fakhoury at the post-mediation and final status conferences;
>
> b. by not filing any trial brief, statement of the case, witness list, exhibit list, jury instructions, or verdict forms for Fakhoury;
>
> c. by not appearing at the OSC hearing;
>
> d. by not providing representation for Fakhoury at trial;
>
> e. by allowing the Fakhoury lawsuit to be dismissed; and, [sic]

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

f. by not appearing for the hearing on the motion for attorney fees or opposing the motion for Fakhoury.

The record clearly establishes each of the charged violations of rule 3-110(a) except for (c) "by not appearing at the OSC hearing," which the court finds to be a willful violation of section 6103 under count 2, below. Respondent's failures to perform legal services competently in the Fakhoury client matter were clearly intentional, reckless, and repeated.

Count 2 -- Failure to Obey Court Order (§ 6103)

The record clearly establishes that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear "by not appearing at the OSC hearing on March 3, 2004 or responding to the superior court's February 18, 2004 order to show cause" and "by not paying the $1,364 sanction."[6]

Count 3 – Failure to Report Sanction (§ 6068, subd. (o)(3))

The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (o)(3), to report the superior court's imposition of the $1,364 sanction to the State Bar in writing within 30 days after his knowledge of the sanction.

Count 4 - Failure to Communicate (§ 6068, Subd. (m))

In count 4, the State Bar charges that respondent wilfully violated section 6068, subdivision (m), which provides that it is the duty of an attorney "To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

[6] The court dismisses with prejudice the other alleged violations of section 6103 that are set forth in count 2 because they are duplicative of the misconduct charged and found under various other counts. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148 ["appropriate level of discipline for an act of misconduct does not depend upon how many rules of professional conduct or statutes proscribe the misconduct"].)

The record clearly establishes the charged violation of section 6068, subdivision (m) because respondent failed to respond to Fakhoury's numerous December 2006 messages in which Fakhoury requested an explanation of the levy on his bank account for $8,774.

Count 5 -- Failure to Communicate (§ 6068, Subd. (m))

In count 5, the State Bar again charges respondent with willfully violating section 6068, subdivision (m). More specifically, the State Bar charges that respondent violated section 6068, subdivision (m) because:

> Respondent did not inform Fakhoury of the following significant events:
>
> a. that a mediation was held in the Fakhoury [lawsuit] on September 2, 2003;
>
> b. that the court had set a final status conference for February 18, 2004 and that Fakhoury's appearance was required at the conference;
>
> c. that he would not be appearing, and did not appear, at the final status conference on February 18, 2004 for Fakhoury;
>
> d. that the court had set the trial in the Fakhoury [lawsuit] for March 3, 2004;
>
> e. that he did not file any trial brief, statement of the case, witness list, exhibit list, jury instructions, or verdict forms for Fakhoury;
>
> f. that he would not be appearing, and did not appear, at the OSC hearing and trial on March 3, 2004 for Fakhoury;
>
> g. that the Fakhoury [lawsuit] was dismissed;
>
> h. that defendant's counsel filed a motion for attorney fees;
>
> i. that respondent would not be opposing the motion for attorney fees for Fakhoury and that respondent would not be appearing, and did not appear, at the hearing on the motion for attorney fees for Fakhoury;
>
> j. that Respondent filed a motion to vacate the dismissal, and that the court granted the motion and vacated the dismissal; and, [sic]

> k. that defendant's counsel filed defendant's motion to vacate, and that the superior court granted the motion and reinstated the order of dismissal.

The record clearly establishes that respondent's failure to notify Fakhoury of each one of these foregoing significant events was a willful violation of section 6068, subdivision (m).

Count 6 -- Failure to Cooperate with State Bar (§ 6068, subd. (i))

In count 6, the State Bar charges that respondent willfully violated section 6068, subdivision (i), which requires that an attorney "cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. . . ." The record clearly establishes that respondent willfully violated section 6068, subdivision (i) by deliberately failing to respond to the State Bar investigator's February 6, 2007, and February 28, 2007, letters regarding the Fakhoury client matter. Such deliberate failures are serious misconduct.

B. The Okuyama Client Matter

On December 19, 2003, Muneaki Okuyama retained respondent to pursue a malicious prosecution action for him on a contingency fee basis. After January 2004, Okuyama received no communication from respondent.

On July 6, 2004, respondent filed, in the Los Angeles County Superior Court, a malicious prosecution complaint for Okuyama and against the Quisenberry Law Firm, B. Kabateck, J. Jacobs, E. Moore, M. Larivee, and others (hereafter "Okuyama lawsuit").

When respondent filed the complaint in the Okuyama lawsuit, the superior court (1) set an initial status conference for November 1, 2004 (hereafter "initial status conference" or "initial conference"); (2) ordered respondent, as plaintiffs counsel, to serve written notice of the initial conference on all parties and to bring proof of that service to the initial conference; (3) ordered

that status conference statements or case management statements be filed and served no later than 15 days before the initial status conference; and (4) notified respondent that sanctions would be imposed if he failed to comply with the foregoing orders. Respondent received all of the superior court's orders.

1. The Quisenberry Defendants

On October 20, 2004, defendants Quisenberry Law Firm, Kabateck, and Jacobs (hereafter collectively "Quisenberry defendants") filed an answer to the complaint. Respondent failed to serve notice of the initial status conference on the Quisenberry defendants.

Neither respondent nor the Quisenberry defendants' counsel appeared at the initial status conference on November 1, 2004. Accordingly, on November 1, 2004, the superior court issued an OSC directing respondent and the Quisenberry defendants' counsel to show cause why sanctions (including but not limited to, monetary sanctions, dismissal of the action, and striking of the pleading), should not be imposed for failure to comply with court rules, failure to prosecute the action, and failure to attend the initial status conference. The OSC was set for a hearing on December 2, 2004. Even though the record establishes that the superior court clerk served, on respondent, notice of the December 2, 2004, hearing on the OSC and that respondent received that notice of hearing, the record does not establish that a copy of the OSC itself was served on respondent or that respondent received that copy of the OSC.

On November 10, 2004, the Quisenberry defendants filed a special motion to strike Okuyama's complaint under Code of Civil Procedure section 425.16 (motions to strike anti-SLAPP actions). In that motion, the Quisenberry defendants contended that Okuyama's malicious prosecution action arose from the Quisenberry defendants' right of petition and that Okuyama could not demonstrate a reasonable probability of prevailing on his action against them. A hearing on the Quisenberry defendants' motion to strike was set for December 2, 2004.

The Quisenberry defendants properly served a copy of their motion to strike and notice of the December 2, 2004, hearing on respondent. And respondent received that copy of the motion and the notice of hearing.

On November 19, 2004, the Quisenberry defendants filed a status conference questionnaire. Respondent did not file a status conference or case management statement for Okuyama.

On December 2, 2004, respondent failed to appear at either the hearing on why sanctions should not be imposed or the hearing on the Quisenberry defendants' motion to strike. Instead, respondent's assistant telephoned the superior court clerk on December 2, 2004, and notified the clerk that respondent would not appear for the hearings because he had to make another appearance in downtown and a court-ordered deposition in Montebello. Respondent never sought a continuance of either of the two December 2, 2004, hearings.

At the December 2, 2004, hearings, the superior court granted the Quisenberry defendants' motion to strike; discharged its November 1, 2004, OSC regarding sanctions as to the Quisenberry defendants' counsel; and ordered respondent to pay $300 in sanctions to the court by December 13, 2004, because respondent failed to appear at the initial status conference November 1, 2004, and failed to respond to the court's November 1, 2004, order.

On December 16, 2004, the superior court entered judgment in favor of the Quisenberry defendants and against Okuyama and awarded to the Quisenberry defendants $6,882.75 in attorney's fees and $919 in costs with respect to their motion to strike. And, on January 20, 2005, the Quisenberry defendants filed and served on respondent notice of entry of the superior court's December 16, 2004, judgment. And respondent received that notice.

On January 28, 2005, respondent filed a notice of appeal of the superior court's December 2, 2004, rulings and its December 16, 2004, judgment. Then, on February 11, 2005, the Court

of Appeal sent respondent notice that, within 10 days, he must file a case information statement and copies of the judgment and orders being appealed that showed their respective dates of entry. Even though respondent received that notice, he failed to file a case information statement or a sufficient copy of the superior court's judgment (respondent did not submit a copy of the judgment that contained the amount of the judgment).

On February 24, 2005, the Court of Appeal sent respondent notice that appellant Okuyama was in default and that, within 15 days, respondent must file a case information statement and copies of the judgment and orders being appealed, which showed their respective dates of entry, the superior court judge's signature, and amounts awarded. Respondent received that notice.

On March 1, 2005, the Quisenberry defendants filed a motion for the attorney's fees that they incurred in defending against Okuyama's lawsuit. A hearing on that motion was set for April 11, 2005.

On March 10, 2005, respondent filed, in the Court of Appeal, a case information statement and a copy of *proposed* order, which was neither file stamped nor signed by the superior court judge. Thus, on March 14, 2005, the Court of Appeal sent respondent notice that, within 15 days, he must file proper copies of the judgment and orders being appealed. Respondent received the notice.

On March 17, 2005, respondent filed a notice designating the record on appeal with the superior court.

On April 11, 2005, respondent failed to appear at the superior court hearing on the Quisenberry defendants' motion for attorney's fees. Instead, respondent's assistant telephoned the court on April 11, 2005, and notified it that respondent would not appear for the hearing

because of the appeal. The superior court granted the Quisenberry defendants' motion for attorney's fees and interlineated the amount of the fees on its December 16, 2004, judgment.

On June 15, 2005, the Court of Appeal ordered the parties to address, in their opening briefs, the issues of Okuyama's failure to designate the reporter's transcript and whether that failure warranted the summarily affirmance of the superior court's December 16, 2004, judgment. Respondent received that order. Thereafter, on January 24, 2006, the Court of Appeal (1) affirmed the superior court's judgment because respondent had not designated, as part of the record on appeal, the reporter's transcript of the December 2, 2004, hearing on the Quisenberry defendants' motion to strike and (2) awarded costs on appeal to the Quisenberry defendants.

In April, July, and August 2006, telephone messages requesting the status of the case were left for respondent on behalf of Okuyama. Respondent failed to respond to those messages.

Then, on May 23, 2006, the Quisenberry defendants filed a motion for statutory attorney's fees on appeal and for entry of judgment on appeal. Respondent appeared at the June 2006 hearing on that motion, which the superior court granted and awarded the Quisenberry defendants statutory attorney's fees on appeal of $21,832.50, payable forthwith.

On July 10, 2006, the superior court entered an amended judgment after appeal for the Quisenberry defendants and against Okuyama in the following amounts: (1) $6,882.75 in attorney's fees and $919 in costs on their motion to strike; and (2) $21,832.50 in statutory attorney's fees on appeal and $532.82 in costs on appeal. Respondent was served with and received a copy of the amended judgment.

On September 18, 2006, Okuyama sent respondent a letter requesting that respondent provide him with the status of his lawsuit. Even though respondent received that letter, he failed to respond to it.

In October 2006, the Quisenberry defendants served, on Okuyama, an order to appear for a judgment debtor's examination. And, on about November 13, 2006, Okuyama paid $32,300 to the Quisenberry Law Firm to satisfy its judgment against him.

2. Defendant Larivee

On November 30, 2004, respondent filed proof of service of Okuyama's complaint on defendant M. Larivee. And, on December 10, 2004, Larivee's filed his answer to Okuyama's complaint.

On January 14, 2005, Larivee filed a special motion to strike Okuyama's complaint on the grounds that the malicious prosecution action arose from the defendants' right of petition and that Okuyama could not demonstrate a reasonable probability of prevailing on his action (see Code Civ. Proc., § 425.16). A hearing on Larivee's motion to strike was set for February 9, 2005. Respondent was properly served with and received written notice of Larivee's motion to strike and the February 9, 2005, hearing on that motion.

On January 28, 2005, respondent purportedly filed an opposition to Larivee's motion to strike. Even though both respondent and Larivee's counsel appeared at the February 9, 2005, hearing on the motion to strike, the superior court continued the hearing to February 25, 2005, because neither it nor Larivee's counsel received a copy of Okuyama's opposition. And, at the hearing on February 25, 2005, the superior court granted Larivee's motion to strike. The superior court found that Okuyama's complaint arose from an act that Larivee took in furtherance of his right of petition and that Okuyama had not produced competent evidence to establish a reasonable probability that he would prevail in his action. The superior court clerk served respondent with notice of entry of the court's ruling on the motion, and respondent received the notice.

On March 16, 2005, the superior court entered judgment in favor of Larivee and against Okuyama and awarded Larivee his attorney's fees and costs (according to proof) on his motion to strike. On May 17, 2005, respondent filed a notice of appeal of that March 16, 2005, judgment. However, on Larivee's motion, the Court of Appeal dismissed the appeal because it was not timely filed.

On March 30, 2006, Larivee filed a motion for the attorney's fees he incurred in prevailing on his motion to strike and in defending against the untimely appeal of the superior court's March 16, 2005, judgment. A hearing on Larivee's motion for attorney's fees was set for May 3, 2006. Respondent did not file an opposition to that motion.

On May 3, 2006, the superior court held a hearing on Larivee's motion for attorney fees, but respondent filed a peremptory challenge to the judicial officer hearing the motion. Accordingly, the superior court ordered the case transferred to another department and continued the hearing on Larivee's motion to June 15, 2006. Respondent received notice of the continuance, but still failed to file an opposition to the motion.

Respondent appeared at the June 15, 2006, hearing on Larivee's motion for attorney's fees. The superior court granted the motion and awarded Larivee $20,890.50 in attorney's fees, payable forthwith. And, on October 17, 2006, the superior court entered an amended judgment in favor of Larivee and against Okuyama in the following amounts: $20,890.50 in attorney's fees, $401 in costs as the prevailing party, and $220.16 in costs on appeal. Respondent received notice of the amended judgment.

On February 7, 2007, and then again on February 28, 2007, a State Bar investigator mailed, to respondent, a letter in which the investigator asked respondent to respond in writing to specific allegations of misconduct that Okuyama had made against respondent. Even though respondent received those two letters, he never responded to them.

Count 7 – Failure to Perform (Rule 3-110(A))

In count 7, the State Bar charges that respondent failed to perform legal services competently in willful violation of rule 3-110(A) when he:

a. failed to serve notice of the November 1, 2004, initial status conference on the Quisenberry defendants;

b. failed to file either a status conference statement or case management statement with respect to the November 1, 2004, initial status conference;

c. failed to appear at the November 1, 2004, initial status conference;

d. failed to appear at the December 2, 2004, hearing on the Quisenberry defendants' motion to strike;

e. filed the complaint in the Okuyama lawsuit without competent evidence;

f. failed to designate, as part of the record on appeal, the reporter's transcript of the December 2, 2004, hearing on the Quisenberry defendants' motion to strike; and

g. filed, on May 17, 2005, an untimely notice of appeal of the superior court's March 16, 2005, judgment awarding Larivee his attorney's fees and costs on his motion to strike.

The record clearly establishes that respondent is culpable of intentionally (and repeatedly) failing to perform legal services competently in willful violation of rule 3-110(A) as charged above in b, d, e, f, and g. The court declines to find respondent culpable of the misconduct charged above in a and c because that misconduct are duplicative of the misconduct charged and found under count 8 below. (*In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at p. 148.) Thus, the violations charged in a and c above are DISMISSED with prejudice.

Count 8 -- Failure to Obey Court Order (§ 6103)

In count 8, the State Bar charges that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear when he (1) failed to serve notice of the November 1, 2004, initial status conference on the Quisenberry defendants; (2) failed to

appear at the November 1, 2004, initial status conference; and (3) failing to respond to the November 1, 2004, OSC. The record clearly establishes only the first two of the three charged section 6103 violations.

The record does not establish the third charged violation of section 6103 because there is no clear and convincing evidence that respondent had actual knowledge of the November 1, 2004, OSC[7] or that the OSC actually directed respondent to respond to it in writing (as opposed to being ordered to appear at the December 2, 2004, hearing on the OSC). Accordingly, the third charged violation of section 6103 is DISMISSED with prejudice.

Count 9 -- Failure to Communicate (§ 6068, Subd. (m))

The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (m), to respond to his client's reasonable status inquiries when respondent failed to respond to (1) the telephone messages that were left for him in April, July, and August 2006 and (2) Okuyama's September 18, 2006, letter.

Count 10 -- Failure to Communicate (§ 6068, Subd. (m))

The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (m), to keep his client reasonably informed of the significant developments in his case when respondent failed to inform Okuyama of the following significant events:

a. that respondent did not appear at the November 1, 2004, initial status conference;

b. that the Quisenberry defendants filed a special motion to strike and that the superior court granted that motion;

c. that respondent did not appear for the December 2, 2004, hearing;

d. that, on December 16, 2004, the superior court entered judgment in favor of the Quisenberry defendants and against Okuyama;

[7] Actual knowledge of a court order is an essential element in establishing that an attorney disobeyed the order in willful violation of section 6103. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787-788, and cases there cited].)

e. that, in January 2005, Larivee filed a special motion to strike and that the superior court granted that motion in February 2005;

f. that, in January 2005, respondent filed an appeal of the Quisenberry defendants' judgment;

g. that, in March 2005, the Quisenberry defendants filed a motion for attorney's fees and that the motion was granted in April 2005;

h. that, on March 16, 2005, the superior court entered a judgment in favor of Larivee and against Okuyama;

i. that, in May 2005, respondent filed an appeal of the judgment in favor of Larivee;

j. that, in December 2005, the Court of Appeal dismissed respondent's appeal of the judgment in favor of Larivee;

k. that, in January 2006, the Court of Appeal dismissed respondent's appeal of the judgment in favor of the Quisenberry defendants;

l. that, in March 2006, Larivee filed a motion for attorney's fees and that the superior court granted that motion in June 2006

m. that on July 10, 2006, an amended judgment in favor of the Quisenberry defendants and against Okuyama was entered; and

n. that on October 17, 2006, an amended judgment in favor of Larivee and against Okuyama was entered.

Count 11 -- Failure to Cooperate with State Bar (§ 6068, subd. (i))

The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (i), to cooperate and participate in State Bar disciplinary investigations when he failed to respond to the State Bar investigator's February 6, 2007, and February 28, 2007, letters regarding Okuyama client matter..

C. Reproval Violations

On March 14, 2006, respondent and the State Bar entered into a stipulation regarding facts, conclusions of law, and disposition in case numbers 04-0-12439 and 04-0-15782 (consolidated) (hereafter "*Campa* I"). On March 16, 2006, the State Bar Court filed an order

approving the stipulation and imposing the stipulated discipline, which was a private reproval with conditions attached thereto for one year. (§§ 6077, 6078; Cal. Rules of Court, rule 956 [now rule 9.19].) Respondent's private reproval became effective on April 6, 2006, and the conditions attached to it were in effect from that date through April 6, 2007.

One of the conditions attached to respondent's reproval required that respondent submit quarterly reports to the State Bar's Office of Probation ("Probation Office") and, in each quarterly report, state under penalty of perjury, among other things, whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproval during the preceding calendar quarter.

Another condition attached to respondent's reproval required that respondent "answer fully, promptly and truthfully, subject to assertion of applicable privileges, any inquiries of the Probation Office which were directed to respondent personally or in writing relating to whether he was complying or had complied with the conditions attached to his reproval."

And another condition attached to respondent's reproval required that respondent (1) complete three hours of Minimum Continuing Legal Education (hereafter "MCLE") approved courses in attorney-client relations and/or general legal ethics no later than April 6, 2007, and (2) submit satisfactory proof of his completion of the three hours to the Probation Office no later than April 6, 2007.

Respondent did not submit a quarterly report for the period of October 1 to December 31, 2006, which report was due by January 10, 2007 (hereafter "January 10, 2007, report"). Nor did respondent submit, to the Probation Office, proof that he completed the required three hours of MCLE courses by April 6, 2007.

On April 14 and July 18, 2007, the Probation Office left respondent's telephone messages informing him that it had not received either his January 10, 2007, report or proof of his

completion of three hours of MCLE courses. Even though the record establishes that respondent did not respond to those two telephone messages, there is nothing in the record which suggests that respondent was asked to respond to them.

On July 31, 2007, the Probation Office mailed respondent a letter regarding his failures to submit his January 10, 2007, report and proof of his completion of three hours of MCLE courses. Respondent received that letter.

On August 15, 2007, respondent's assistant faxed a letter to the Probation Office in which she stated that respondent was in Hawaii on a federal case and would return to California on Wednesday, August 22, 2007. On August 20, 2007, the Probation Office left respondent a telephone message informing him again that he needed to submit his January 10, 2007, report. Also, on August 20, 2007, and then again on August 23, 2007, the Probation Office informed respondent that the State Bar's Ethics School did not satisfy the reproval condition that required him to complete three hours of MCLE courses.

On August 23, 2007, respondent telephoned the Probation Office, and the Probation Office again informed respondent that he needed to submit his January 10, 2007, report. Respondent replied that he would take care of everything "by tomorrow." And, on August 24, 2007, respondent submitted his January 10, 2007, report. But the Probation Office did not file that report because respondent failed to state in it whether he had complied with all the provisions of the State Bar Act and Rules of Professional Conduct during the preceding calendar quarter. On August 31 and September 4 and 12, 2007, the Probation Office notified respondent by telephone that the January 10, 2007, report, which he finally he submitted on August 24, 2007, was not filed because of this material defect. Respondent never submitted a revised or corrected January 10, 2007, report in which he stated whether he had complied with the State Bar Act and Rules of Professional Conduct.

On September 10, 2007, respondent faxed the Probation Office a letter stating that, the next day (i.e., September 11, 2007), he would personally deliver to the Probation Office a certificate of completion showing that he had completed required three hours of MCLE courses. Respondent, however, failed to deliver a certificate of completion the next day. Instead, respondent faxed the Probation Office a letter in which he identified the three hours of MCLE courses he purportedly completed.

On September 12, 2007, the Probation Office telephoned respondent and asked him to submit *proof* (i.e., a certificate of completion) that he actually completed the three hours of courses he identified in the letter he faxed to the Probation Office on September 11, 2007. Respondent, however, never provided the Probation Office with proof of his completion of three hours of MCLE courses.

Finally, on January 11, 2008, the Probation Office left respondent a message asking that he please call back regarding a very important matter. Respondent did not respond to the Probation Office's message.

Count 12 – Reproval Violation (Rule 1-110)

In count 12, the State Bar charges respondent with willfully violating rule 1-110, which provides: "A member shall comply with conditions attached to public or private reprovals or other discipline administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 9.19, California Rules of Court."

The record clearly establishes that respondent willfully violated rule 1-110 when he failed to submit a January 10, 2007, report stating, under penalty of perjury, whether he had complied

with all the provisions of the State Bar Act and the Rules of Professional Conduct during the period of October 1 to December 31, 2006.[8]

The record, however, does not establish the charged violations of rule 1-110 that are based on respondent's failures to respond to the Probation Office's April 14 and July 18, 2007, and January 11, 2008, telephone messages. First, the State Bar neither pleaded nor proved that one of respondent's reproval conditions required him to respond to telephone messages from the Probation Office. Second, even though respondent's reproval conditions required that he "answer fully, promptly and truthfully, . . . , any inquiries of the Probation Office which were directed to respondent personally or in writing relating to whether he was complying or had complied with the conditions attached to his reproval," the State Bar neither pleaded nor proved (1) that the Probation Office directed, to respondent *personally or in writing*, an inquiry relating to whether he was complying or had complied with the conditions attached to his reproval or (2) that respondent failed to fully, promptly, and truthfully answer such an inquiry.

In short, the charged violations of rule 1-110 based on respondent's failures to respond to the Probation Office's telephone messages are DISMISSED with prejudice.

Count 13 – Reproval Violation (Rule 1-110)

The record clearly establishes that respondent willfully violated rule 1-110 when he failed to submit, to the Probation Office, proof that he completed three hours of MCLE courses.

4. MITIGATING AND AGGRAVATING CIRCUMSTANCES

A. Factors in Mitigation

There is no evidence of any mitigating factors.

[8] Respondent was actually required to state whether he had complied with the State Bar Act, the Rules of Professional Conduct, *and all conditions of the reproval* during the period of October 1 to December 31, 2006. However, the State Bar charges respondent only with failing to state whether he had complied with the State Bar Act and the Rules of Professional Conduct during that time period.

B. Factors in Aggravation

First, respondent has one prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std 1.2(b)(i).)[9] Respondent's prior record of discipline is the private reproval that was imposed on him in *Campa* I. The parties' stipulation in *Campa* I establishes that, in a single client matter before the Workers' Compensation Appeals Board (hereafter "WCAB"), respondent: (1) recklessly failed to perform legal services competently in willful violation of rule 3-110(A) by prematurely leaving a June 2003 mandatory settlement conference without the judge's permission and by failing to appear at the September 2003 trial before the WCAB; and (2) willfully violated his duty, under section 6103, to obey court orders by failing to respond to an OSC issued by the WCAB in mid-2003 directing respondent to show why sanctions should not be imposed on him for his frivolous conduct in prematurely leaving the mandatory settlement conference without the judge's permission.

Second, respondent's misconduct in the present proceeding involves multiple acts of misconduct. (Std 1.2(b)(ii).)

Third, respondent's misconduct in the present proceeding caused significant client harm. (Std. 1.2(b)(iv).) Fakhoury had to pay $8,744 in attorney's fees to the defendant. And Okuyama had to pay $32,300 in attorney's fees and costs to the Quisenberry defendants and $21,511.66 in attorney's fees and costs to Larivee.

Fourth, respondent's failure to participate in this disciplinary proceeding before the entry of his default is an aggravating factor. (Std. 1.2(b)(vi).) However, contrary to the State Bar's contention, its weight in aggravation is limited because the conduct relied on for this aggravating factor closely equals the misconduct relied on to find respondent culpable of violating section

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

6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

Fifth, the repeated reminders and need of the Probation Office to intervene and actively seek respondent's compliance with the reproval conditions to which he voluntarily stipulated are aggravating circumstances. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.) "These were not one or two routine reminders, . . . and even these were not enough to secure respondent's" compliance with his quarterly reproval reporting requirement or his MCLE courses requirement. (*Ibid*.)

5. 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 2.6, which applies to respondent's violations of sections 6068 and 6103. Standard 2.6 provides, inter alia, that a violation of section 6068 or 6103 is to "result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3." And standard 1.3 provides:

> The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and

> the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

Of course, contrary to the State Bar's contention, the generalized language of standard 2.6 provides little guidance to the court. (*In re Morse* (1995) 11 Cal.4th 184, 206.)

In addition to standard 2.6, the court must consider standard 1.7(a), which provides that, when an attorney has a prior record of discipline, "the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."

The State Bar contends that the appropriate level of "discipline will be a one-year . . . suspension and until [respondent] completes restitution to Okuyama for the judgment he paid to the Quisenberry defendants and until [respondent] satisfies the judgment entered against Okuyama and in favor of the Larivee defendant, [a] three-year stayed suspension, two years [sic] probation with standard terms and conditions. . . ."[10]

[10] In its brief, the State Bar failed to explain why it seeks restitution only for Okuyama and not Fakhoury, who paid the defendant in his lawsuit $8,774 in attorney's fees. Likewise, the State Bar failed to explain why it does not seek respondent's payment of the $1,364 in sanctions that the superior court imposed on him on March 3, 2004, in the Fakhoury lawsuit. (See, e.g., *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 869.) The court declines to sua sponte address the appropriateness of conditioning the termination of respondent's 18-month suspension on his payment of the $1,364 in sanctions because the record does not contain adequate specifics regarding the sanctions (e.g., the record does not even contain a copy of the superior court's March 3, 2004, sanction order). Of course, when respondent makes a motion to terminate his 18-month suspension (Rules Proc. of State Bar, rule 205(c)), the State Bar should adequately address the issue of whether it is necessary or appropriate for the State Bar Court to impose, on respondent, a condition of probation requiring him to pay the $1, 364 in sanctions (Rules Proc. of State Bar, rule 205(g)).

The amounts for which the State Bar contends respondent's should make restitution to the Quisenberry defendants and Larivee are, in effect, tort damages for legal malpractice. As the review department held in *In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at page 153:

> The Supreme Court does not 'approve imposition of restitution as a means of compensating the victim of wrongdoing. [Citation.]' (*Sorensen v. State Bar* [(1991) 52 Cal.3d 1036,] 1044.) In fact, up until *Sorensen*, almost all of the Supreme Court's cases requiring restitution involved misuse of client funds and unearned fees. (*Ibid*.) [While others involved restitution of court ordered sanctions (see, e.g., *Hunniecutt v. State Bar* (1988) 44 Cal.3d 362, 367, 374), funds improperly borrowed from clients (see, e.g., *Beery v. State Bar* (1987) 43 Cal.3d 802, 811-812, 816) and benefits or profits wrongfully obtained (see, e.g., *In re Morse*, *supra*, 11 Cal.4th at p. 211).] Then, in *Sorensen*, the Supreme Court extended the protective and rehabilitative principles of restitution to cover specific out-of-pocket [losses] directly resulting from an attorney's violation of his duties (1) to bring only such actions and proceedings as are just and (2) not to commence or continue an action from any corrupt motive or interest. However, we do not construe *Sorensen* as extending restitution to cover tort damages.
>
> In fact, in *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 650, we held that it is inappropriate to use restitution as a means of awarding tort damages for legal malpractice. (Accord *King v. State Bar* (1990) 52 Cal.3d 307, 312, 315-316 [Supreme Court adopted review department's discipline recommendation, which recommendation deleted the hearing panel's probation condition requiring King to make restitution to a former client for the $84,000 legal malpractice judgment client obtained against King].) Accordingly, we hold that it is inappropriate to use restitution as a means of awarding tort damages for harassment and intentional infliction of emotional distress.

In short, this court rejects the State Bar's contention that respondent should be ordered to make restitution to Okuyama for the $32,300 Okuyama paid to satisfy the judgment in favor of Quisenberry defendants and for the $21,511.66 in attorney's fees and costs awarded to Larivee.[11] The court also rejects the State Bar's contention that respondent should be placed on two years' probation. In a default proceeding, it is improper to recommend both a period of suspension and

[11] For the same reasons, the court declines to sua sponte recommend that respondent be required to make restitution to Fakhoury for the $8,774 in attorney's fees Fakhoury had to pay the defendant in his lawsuit.

a period of probation. (Rules Proc. of State Bar, rule 205; *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 110.)

To support its contention that respondent should be placed on three years' stayed suspension and one year's suspension, the State Bar cites to *Lister v. State Bar* (1990) 51 Cal.3d 1117. Lister's misconduct involved three client matters. Lister failed to perform legal services and communicate with two clients resulting in the loss of one of the client's cause of action; failed to timely return one of the client's file upon demand, and failed to cooperate with the State Bar's disciplinary investigation of his misconduct, continued to represent clients when he knew or should have known that he was not competent to handle their matters, and failed to use his best judgment and learning in accomplishing a settlement with reasonable speed. In addition, Lister had a prior record of discipline, but it was remote in time and considered minor. The Supreme Court placed Lister on three years' stayed suspension and three years' probation on conditions, including a nine-month suspension.

This court finds *Lister v. State Bar, supra*, 51 Cal.3d 1117, instructive on the issue of discipline in the present proceeding. This court also finds, however, that respondent's misconduct warrants a substantially greater period of suspension than that imposed in *Lister*. Notably, respondent intentionally failed to perform in the Fakhoury and the Okuyama client matters at the same time that he was actively litigating charges of similar misconduct in *Campa* I. In addition, respondent's misconduct involves two reproval violations. This court finds that, under the facts of this case, respondent's failure to submit a January 10, 2007, report that states, under penalty of perjury, whether he had complied with the State Bar Act and the Rules of Professional Conduct during the preceding calendar quarter is strong circumstantial evidence that respondent violated one or more provision of the State Bar Act or the Rules of Professional Conduct during the relevant time period.

Finally, the private reproval together with its attendant conditions that was impose on respondent in *Campa* I provided respondent with an opportunity to reform his conduct to the ethical strictures of the profession. His two reproval violations in the present proceeding strongly suggest that respondent failed to undertake the basic rehabilitative steps contained in his reproval conditions. What is more, respondent's failure to strictly comply with his reproval conditions " 'demonstrates a lapse of character and a disrespect for the legal system that directly relate to his fitness to practice law and serve as an officer of the court. [Citation.]' [Citation.]" (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) In short, respondent's unwillingness or inability to comply with his reproval conditions raises serious public protection concerns.

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

6. DISCIPLINE RECOMMENDATION

The court recommends that respondent **DRAGO CAMPA**, State Bar Number 170057, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, subject to the following conditions.

1. Respondent is suspended from the practice of law for a minimum of eighteen months, and he will remain suspended until the following requirements are satisfied:

    i. The State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Rules of Procedure of the State Bar; and

    ii. If he remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

2. Respondent must comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating his suspension.

7. MPRE, RULE 9.20 & COSTS

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

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

Dated: August 25, 2009.

RICHARD A. HONN
Judge of the State Bar Court