

as to Facts and Admission of Documents (the May 16, 2008 Stipulation).

Trial was held on May 16, 2008. The State Bar was represented by Deputy Trial Counsel Bitu Shasty. Respondent was represented by attorney David A. Clare.

Following receipt of closing briefs, the court took this matter under submission on June 13, 2008.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the evidence and testimony introduced at this proceeding and on the parties' May 16, 2008 stipulation.

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 10, 1959, and has been a member of the State Bar of California since that time.

B. Probation Conditions in Supreme Court Case No. 140498

On September 27, 2005, respondent signed a stipulation as to facts and disposition in State Bar Court case Nos. 01-O-01343, 04-O-11715, and 04-O-14235. Respondent's counsel signed the stipulation on September 10, 2005; the deputy trial counsel representing the State Bar signed the stipulation on October 16, 2005. On November 15, 2005, the Hearing Department of the State Bar Court filed an order approving the stipulation and recommending that the California Supreme Court impose upon respondent actual suspension along with conditions of probation as set forth in the order approving stipulation. On November 15, 2005, the order approving the stipulation was properly served on respondent, who received the order.

On April 18, 2006, in Supreme Court case No. 140498, the California Supreme Court ordered that respondent be suspended from the practice of law for six months, that execution of that suspension be stayed, and that he be placed on probation for two years subject to certain conditions, as recommended by the Hearing Department of the State Bar Court in its November

15, 2005 order approving stipulation. (State Bar Court case Nos. 01-O-01343, 04-O-11715, 04-O-14235.) The Supreme Court Order (SCO) became effective on May 18, 2006.

Among other probation conditions, respondent was required to:

1. Submit to the Office of Probation written quarterly reports each January 10, April 10, July 10, and October 10 of the probation period (quarterly probation reports);
2. File with each required quarterly report a certificate from respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, which certificate (CPA report) contains certain statements and representations (financial certificate), if respondent possesses client funds at any time during the period required by a required quarterly report; or, if respondent does not possess any client funds, property or securities during the entire period covered by the quarterly report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period;
3. Successfully complete 12 hours of legal education (MCLE) courses in law office management, attorney/client relations and/or general legal ethics, separate from any MCLE requirement, and provide proof of completion thereof to the Office of Probation within six months of the effective date of the SCO;
4. Join the Law Practice Management and Technology Section of the State Bar within 30 days of the effective date of discipline and pay the dues and costs of enrollment for two years, and furnish satisfactory evidence of membership in the section to the Office of Probation in the first quarterly report;
5. Begin attempts within 30 days of the effective date of the SCO to contact Mulugheta T. Belay (Belay) and inform Belay that respondent agreed to participate in mandatory fee arbitration, as required in the November 15,

2006 Order Approving Stipulation, and provide the Office of Probation

satisfactory proof of Belay's refusal to participate in the arbitration, in the event that Belay refused to participate;

6. Locate the file concerning the homeless client (the \$5,000 Client) for whom respondent had deposited a \$5,000 settlement draft into his client trust account (CTA) on September 7, 2004, and attempt to contact the \$5,000 client in the manner specified in the November 15, 2005 Order Approving Stipulation; or interplead the \$5,000 with the Los Angeles Superior Court, if respondent was unable to reach the \$5,000 client within six months of the effective date of the SCO.

Notice of the SCO was properly served upon respondent, who received it.

C. Respondent's Lack of Compliance Re: Quarterly Reports, CPA Reports, Law Practice Management, Mandatory Fee Arbitration, and Restitution

On June 5, 2006, the Office of Probation sent a letter to respondent reminding him of the terms and conditions of his probation (the June 5, 2006, letter). The June 5, 2006 letter, which respondent received, listed the compliance due-dates for filing the Quarterly Reports, completing 12 hours of MCLE courses, joining the Law Practice Management and Technology Section, engaging in Mandatory Fee Arbitration, making restitution, and taking the Multi-State Professional Responsibility Examination (MPRE). The letter also warned respondent that failure to timely submit reports or any other proof of compliance would result in a non-compliance referral to the State Bar Court or referral for action by the Supervising Attorney of the Office of Probation. Among the documents enclosed with the June 5, 2006 letter were copies of the portion of the Order Approving Stipulation that set forth the conditions of respondent's probation, a quarterly report instruction sheet, a quarterly report form, and a proof of payment information sheet.

Nevertheless, respondent did not timely submit his quarterly reports, which were due on July 10 and October 10, 2006. Respondent's July 10, 2006 quarterly report was filed August 3, 2006, September 26, 2006, and October 12, 2006. Respondent filed his October 10, 2006 quarterly report on October 12, 2006 and November 2, 2006. The January 10, 2007 quarterly report was not filed until April 27, 2007. Respondent's April 10, 2007 quarterly was filed on April 27, 2007.

Moreover, in the May 16, 2008 Stipulation, filed with and accepted by this court, respondent admitted that at all times relevant to the period of his probation he was in possession of client funds. He further stipulated that at no time did he file any CPA reports with the Office of Probation.

Respondent did not timely comply with the probation condition requiring him to join the Law Practice Management and Technology Section of the State Bar by June 17, 2006. Respondent did not join the section until September 5, 2006.

Respondent did not send the three certified letters to Belay to initiate Mandatory Fee Arbitration, as was required by his probation. Thus, the evidence shows that respondent failed to contact Belay and offer fee arbitration in a timely fashion or in the manner set forth in his probation conditions.

Despite his efforts (see section D, *post*), respondent was unable to locate the homeless shelter frequented by the \$5,000 client to whom he was required to make restitution. The probation condition regarding restitution required that respondent interplead the \$5,000 funds, which he was holding in trust for the \$5,000 client, with the Los Angeles Superior Court, if after six months from the effective date of his discipline, he had been unable to make contact with the \$5,000 client. However, respondent did not make contact with the client and never interpleaded the funds with the superior court. Nor did respondent file a motion with the Hearing Department

of the State Bar Court to modify the probation term regarding restitution or file any motion with the State Bar Court seeking to modify any terms or conditions of his probation.

D. Respondent's Efforts to Comply with Probation Conditions

Respondent, who has been an attorney since 1959, is seventy-seven years of age. In 1969, respondent was diagnosed with *tic douloureux*, also known as trigeminal neuralgia, a disabling illness, which causes, among other things, severe migraine headaches. In an attempt to control his illness, respondent has undergone numerous brain surgeries with varying degrees of success. His last surgery was in 1989. Due to severity of his illness, respondent agreed to place himself on inactive status for about ten years, from 1982 to 1992. Respondent still suffers from severe migraine headaches and pain, which are related to his illness.

In November 2005, respondent's health greatly deteriorated. Respondent believes this deterioration was due to a protracted lawsuit in which he was personally involved, regarding real property that he owned. As a result of the lawsuit, respondent had to file for bankruptcy. In his testimony, respondent described the lawsuit and the filing for bankruptcy as the most shocking event of his life. The stress, which respondent felt, greatly affected his health. Respondent's symptoms, associated with *tic douloureux*, worsened. He suffered constant migraine headaches and excruciating pain in his right eye. Respondent was distraught much of the time. His stress coincided with the first year of his probation. As a result in November 2005, respondent was unable to work. Respondent sought medical help for pain and his inability to sleep. Eventually, medication proved helpful. According to respondent, his health has improved in the past few years, so that he is now able to work.

In his testimony, respondent acknowledged that he has never been good with paperwork. He believes his main strength to be oral argument. Thus, from his early days as an attorney to the present, it has been respondent's practice to associate another attorney on all his cases.

Respondent shares his fees with other lawyers, who draft the pleadings.

Respondent had a difficult time understanding the terms of probation in his underlying disciplinary matter, but wanted to remain in compliance with his probation conditions. Prior to filing his first quarterly report, respondent spoke by telephone with the probation deputy assigned to his case; on June 23, 2006, he met with the probation deputy for three and half hours. At the conclusion of the meeting, respondent felt as though he understood the terms and conditions of his probation. Unfortunately, he did not.

Respondent sought assistance and advice in complying with terms of his probation from his long-time friend, business associate, and occasional law associate, attorney Lorraine Howell (Howell). Howell testified that respondent was concerned and worried about complying with his probation conditions. Respondent was having a difficult time understanding what he had to do to comply with his probation requirements.

Howell met with respondent on July 3, 2006, prior to the filing of his first quarterly report with the Office of Probation, in an attempt to help respondent comply with the terms of his probation. After the meeting, Howell sent a letter to respondent's counsel in the underlying disciplinary matter, with a copy to respondent's probation deputy, concerning respondent's confusion, as well as her own, regarding the terms of respondent's probation. Howell advised respondent to seek the advice of his prior counsel; but, she continued to frequently speak with respondent concerning his probation compliance. Respondent was always concerned with being in compliance.

On August 3, 2006, respondent met with his probation deputy; he hand-delivered his first quarterly report, which had been due on July 10, 2006. Respondent wrote on the report that he could not locate the homeless shelter where his homeless client had been for a very short time. Respondent prepared the July 10 and the October 10, 2006 reports with the probation deputy's

help, and then handed them to her.

As discussed in section C, *ante*, respondent did not contact Belay and offer fee arbitration in a timely fashion or in the manner required by his probation. However, on August 22, 2006, respondent spoke to Belay. Belay did not want to go through the fee arbitration process; and thus declined to arbitrate his fee dispute with respondent. Rather, Belay offered to settle the dispute with respondent for \$1,200. On August 24, 2006, respondent sent a confirmation letter to Belay and a copy to his probation deputy, regarding Belay's refusal to participate in the fee arbitration process and his offer to settle the fee dispute with respondent. On October 7, 2006, respondent purchased four money orders, which were made payable to Belay; the purchased funds totaled \$1,200. Respondent sent the funds to Belay, who received them.

The evidence also shows that respondent made a good faith attempt to locate the homeless shelter frequented by the \$5,000 client and to provide notice alerting her that he was holding funds in trust for her, as required pursuant to the terms of his probation. Despite respondent's best efforts, respondent was unable to locate the homeless shelter. Respondent, however, was able to locate the client's file that contained a post office box address at which the client had received mail. On October 24, 2006, respondent sent a letter to the \$5,000 client asking her to contact him and finalize her case. (Ex. 12, pp. 0005-0006.) But, as found in section C, *ante*, although respondent never made contact with the \$5,000 client, he did not interplead the \$5,000 with the superior court. Nor did respondent file a motion with the State Bar Court to modify the probation term regarding restitution to the \$5,000 client.

In September or October 2006, respondent contacted attorney Rhonda Walker (Walker) asking for help with his State Bar probation. Respondent retained attorney Walker to assist him in complying with his probation conditions because he was still confused as to the terms of probation. Respondent presented Walker with a probation report that was not assembled.

Walker assembled the report and tried to figure out what respondent had to do.

Walker assisted respondent with the filing of an amended quarterly report on September 26, 2006, for the quarter ending July 10, 2006. She prepared and attached respondent's declaration, which described respondent's attempts to resolve the fee dispute with Belay and respondent's continuing efforts to locate the homeless shelter that the \$5,000 client had frequented. Walker also assisted respondent in filing the October 10, 2006 quarterly report. On October 12, 2006, respondent delivered the October 10, 2006 quarterly report to the probation deputy assigned to his case. At that meeting, respondent also delivered his proof of payment of \$1,200 to client Belay in full satisfaction of the fee dispute.

Walker further assisted respondent in filing an amended report for the October 10, 2006 quarterly report. On November 2, 2006, respondent filed the amended report, which included a copy of respondent's October 24, 2006 letter to the \$5,000 client. Additionally, Walker had several telephone conversations with respondent's probation deputy in order to help respondent comply with his probation terms.

Walker testified that during the time she was assisting respondent, she was aware that the litigation concerning his real property caused him to feel greatly stressed. She also confirmed that respondent was not in good health during the time she was assisting him with his probation. On one occasion, respondent was forced to leave a deposition due to pain. Walker further testified that respondent complained of migraines, intense pain from his *tic douloureux*, loss of sleep, and high blood pressure. On March 15, 2007, Walker stopped assisting respondent in his probation matter and advised him to seek competent counsel in State Bar matters.

On March 15, 2007, respondent met with the probation deputy assigned to his case and received a written summary of his probation compliance status. Respondent, however, still did not fully understand his status regarding his compliance with his probation terms.

In April 2007, respondent met with his current counsel to seek help in dealing with his probation compliance. Respondent then filed his January 10 and April 10, 2007 quarterly reports on April 27, 2007.

Between June 19, 2006, and October 3, 2007, respondent met with his probation deputy five times, all at his request; he discussed his probation compliance with her on the telephone on 16 occasions.

Count 1: Business and Professions Code Section 6068, Subdivision (k)

Business and Professions Code section 6068, subdivision (k),¹ provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

The State Bar has shown by clear and convincing evidence that respondent willfully violated section 6068, subdivision (k), by failing to do the following:

1. Timely submit four quarterly reports (i.e., the July 10, 2006, October 10, 2006, January 10, 2007, and April 10, 2007 reports);
2. File certain CPA reports as required;²
3. Timely join the Law Practice Management and Technology Section of the State Bar;
4. Contact Belay in the manner specified by his probation condition and offer fee

¹ All references to section are to the Business and Professions Code, unless otherwise indicated.

² The parties filed the May 16, 2008 Stipulation as to facts and admission of documents, which has been accepted by the court. In paragraph 23, of the May 16, 2008 Stipulation, it is specified that “at all times relevant herein [respondent] has been in possession of client funds.” In paragraph 24, it is further stated that “[a]t no time has [r]espondent filed any CPA reports with the Office of Probation.”

However, the NDC in this proceeding only charges respondent with failing to file his CPA report that was due on October 10, 2006 (NDC, p. 6, ¶13) and failing to timely file his July 10, 2006 report (NDC, p. 6, ¶15). The NDC alleges that the July 10, 2006 report was filed on August 3, 2006 (NDC, p. 6, ¶15). The NDC was not amended. Respondent was not charged with failing to file or failing to timely file any CPA reports, other than those referenced in paragraphs 13 and 15 of the NDC. Respondent is only found culpable of that with which he has been charged.

arbitration in a timely fashion or in the manner required by his probation;

5. Comply with the requirement regarding making restitution to the \$5,000 client. Specifically, respondent failed to interplead the \$5,000 client funds with the superior court.

The court finds that there was no clear and convincing evidence that respondent failed to earn twelve hours of MCLE credits within six months of the date of the Supreme Court Order in the underlying matter.

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)³

A. Mitigation

Respondent's good faith efforts at compliance are a significant mitigating circumstance. The evidence shows that respondent made good faith efforts to comply with the terms of his probation, even though he fell short in succeeding. Respondent met multiple times with his probation deputy and spoke with his probation deputy over the telephone on many occasions in a good faith attempt to comply with the terms of his probation. (Std. 1.2(e)(ii).)

Extreme emotional difficulties or physical disabilities can constitute mitigating evidence. (Std. 1.2(e)(iv).) The evidence shows that respondent suffered from a serious disabling illness, *tic douloureux*, during the period of the misconduct. He testified that besides going through a particularly stressful period due to his personal involvement in a lawsuit that necessitated his filing for bankruptcy, his health greatly deteriorated during the period he was attempting to comply with his probation conditions. Attorney Rhonda Walker, whom respondent had retained

³ All further references to standards are to this source.

to assist him in complying with his probation conditions, corroborated that respondent was extremely stressed and suffered pain due to his physical illness during the time he was attempting to comply with his probation conditions. Thus, the testimony of respondent and attorney Walker, in conjunction with the evidence regarding the history of respondent's illness, including the fact that in 1982, respondent stipulated to being enrolled as an inactive member of the State Bar of California pursuant to section 6007, subdivision (b), due to the nature of his disability, establish that there is a causal connection between respondent's illness and his inability to comply with his probation conditions. While no expert testimony was introduced to establish a causal connection between respondent's illness and his misconduct, as called for by standard 1.2(e)(iv), the standards are guidelines not inflexible mandates. Lay testimony, regarding emotional problems or illness, has often been considered as mitigation. (See *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 340-341.) Thus, the court finds respondent's illness to be a mitigating circumstance. (Std. 1.2(e)(iv).)

Respondent demonstrated candor and cooperation with the State Bar during the disciplinary proceedings. (Std. 1.2(e)(v).) Respondent took great efforts to meet and confer with his probation deputy in his attempt to comply with probation conditions. He also stipulated to most, if not all, of the underlying allegations and admission of documents, which saved the State Bar time and expense. His cooperation and candor undoubtedly shortened the trial time in this proceeding.

B. Aggravation

There are several aggravating *factors*. (Std. 1.2(b).)

Respondent has two prior instances of discipline. (Std. 1.2(b)(i).)

1. In respondent's first disciplinary matter, the State Bar Court imposed a private reproof upon respondent in State Bar Court case Nos. L.A. 2905 and L.A.

3070/3159, for misconduct that occurred in the 1970's. Respondent stipulated that he be enrolled as an inactive member of the State Bar of California pursuant to section 6007, subdivision (b), due to the nature of his disability. He remained on inactive status until April 1, 1992. The State Bar concedes that respondent's first imposition of discipline is exceedingly remote in time and the misconduct involved was determined to be minimal in severity, as evidenced by the private reproof ordered by the court. This court agrees and finds that the imposition of a private reproof, occurring more than 20 years previous to the misconduct at issue in this proceeding, is too remote in time to merit significant weight on the issue of degree of discipline. (See *In the Matter of Shinn* (Review Dept. 1992) 2 Cal.State Bar Ct. Rptr. 96, 105; *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. StateBarCt.Rptr. 703, 713.)

2. Effective May 18, 2005, in the underlying matter, respondent was ordered suspended from the practice of law for six months, stayed, and placed on probation for two years, and actually suspended for thirty days for failing to perform legal services competently, failing to communicate with a client, failing to cooperate in a State Bar investigation, and depositing or commingling funds in his Client Trust Account. (Supreme Court case No. S140498; State Bar Court case Nos. 01-O-01343; 04-O-11715; 04-O-14235).

Respondent committed multiple acts of wrongdoing, including failing to timely submit quarterly reports; failing to comply with the probation condition regarding the submission of CPA reports, failing to timely comply with the probation condition requiring him to join the Law Practice Management and Technology Section of the State Bar, failing to comply with certain requirements of the probation condition regarding Mandatory Fee Arbitration, and failing to

comply with certain requirements of the probation condition regarding restitution. (1.2(b)(ii).)

The State Bar contends that respondent's misconduct harmed significantly the public and the administration of justice. (Std. 1.2(b)(iv).) The court does not agree. As discussed, *ante*, respondent stipulated to most, if not all, of the underlying allegations and admission of documents. Respondent displayed candor and all times cooperated with the State Bar, saving the State Bar time and expense, and shortening the trial time in this proceeding. While respondent's inability to comply with certain of his probation conditions impeded his efforts at rehabilitation, there is no clear and convincing evidence that it harmed the public or the administration of justice.

V. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std 1.3.) Disciplinary probation serves the critical function of protecting the public and rehabilitating the attorney. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

Respondent is found culpable of violating his probation conditions. The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 1.7(a),⁴ and 2.6.)

Standard 1.7(a) provides, "[i]f a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior

⁴ As discussed in the section entitled, "B. Aggravation," *ante*, the misconduct at issue in respondent's first prior record of discipline is remote in time. Additionally, the misconduct involved was determined to be minimal in severity as evidenced by the private reproof ordered by the court. Thus, the State Bar concedes in its Closing Brief that standard 1.7(a), rather than standard 1.7(b) is the appropriate standard to apply in this matter. The court agrees.

imposition of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline 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.”

Standard 2.6(a) provides for discipline ranging from suspension to disbarment for violations of subdivisions of section 6068, depending on the gravity of the offense or the harm to the victim.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.) The court will look to applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges the court to impose an actual suspension of 18 months, and until respondent provides satisfactory proof to the court of his rehabilitation, fitness to practice and learning and ability in the general law at a hearing pursuant to standard 1.4(c)(ii). Respondent, on the other hand, argues that the mitigating circumstances are compelling and outweigh the aggravating circumstances and thus his discipline should not include any period of actual suspension.

Respondent’s prior misconduct and his present probation violations involve inattention to his professional duties and an inability to conform to the standards required of attorneys licensed in this state.

In determining the appropriate discipline in this matter the court finds guidance in *In the Matter of Gorman*, (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567; *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678; and *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

In *Gorman*, the attorney was actually suspended for 30 days with a two-year probation and a two-year stayed suspension after he violated two probation conditions to timely complete restitution and ethics school. His cooperation, good faith efforts to pay restitution, and emotional difficulties were considered as mitigation. But these factors did not outweigh the aggravating circumstances that included prior misconduct, the fact that the State Bar had to repeatedly remind the attorney to comply with probation, the fact that the attorney misrepresented the official participation of a third party in the proceedings, and the fact that the attorney's failure to pay restitution was significantly related to the underlying misconduct. He had one prior record of discipline.

In *Laden*, the attorney was actually suspended for 90 days and until he made restitution for his numerous untimely restitution payments to a single client and several delinquent quarterly probation reports. The attorney had four prior records of discipline, but this was the third matter involving his failure to make timely restitution to the same client. Were it not for his strong mitigating evidence, including the attorney's belated full and complete compliance with the conditions of probation, the Review Department would have recommended more than a 90-day actual suspension.

In *Howard*, the attorney was actually suspended for one year because he failed to submit two quarterly probation reports, to timely deliver financial records to a former client's accountant, and defaulted in the disciplinary proceeding. The attorney's lack of cooperation with the State Bar was a serious concern.

Respondent's misconduct is less serious than that of *Howard* in that he has participated in these proceedings and did not completely abandon his probationary duties, since he did file his quarterly reports and joined the Law Practice Management and Technology Section of the State Bar, albeit late. Respondent also made good faith efforts to comply with his other probation requirements. In addition, unlike the attorney in *Howard*, respondent cooperated with the State Bar.

However, the severity of respondent's violations is more than that of *Gorman* and *Laden*. In *Gorman*, the attorney fully complied with his probation requirement regarding the submission of quarterly reports. He timely submitted quarterly probation reports; and he also timely passed the professional responsibility examination. Like the respondent herein, the attorney in *Gorman* presented strong mitigating evidence to the court, including cooperation with the State Bar, good faith efforts to pay restitution, and emotional difficulties. While respondent eventually complied with the probation conditions requiring him to file quarterly reports and to join the Law Practice Management and Technology Section of the State Bar, he did not comply with the requirements of several of his probation conditions. He did not comply with: (1) the requirements of the probation condition regarding the submission of CPA reports; (2) the requirements of the probation condition regarding Mandatory Fee Arbitration; and (3) the requirements of the probation condition regarding restitution.

As referenced in the discussion of *Laden, ante*, but for the strong mitigating evidence, including financial hardship, good faith efforts, cooperation with the client, recognition of the seriousness of his wrongdoing, community service, and the attorney's belated full and complete compliance with the conditions of probation, the Review Department would have recommended more than a 90-day actual suspension. The mitigating evidence in *Laden* was considerably stronger than that presented by respondent herein.

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) This court is greatly concerned about respondent’s inability to comply with professional standards. It is particularly worrisome that respondent was unable to satisfy his probation conditions despite his good faith efforts and assistance from his probation deputy and three attorneys.

Notwithstanding, the court finds that the State Bar’s recommendation of at least 18 months actual suspension and until respondent provides satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law at a hearing pursuant to standard 1.4(c)(ii), is excessive in light of the foregoing case law and standards. Respondent’s misconduct warrants a less severe level of discipline than the one year actual suspension imposed in *Howard*, but more than the 90-day actual suspension imposed in *Laden*. After balancing all relevant facts and circumstances, including respondent’s misconduct and the mitigating and aggravating circumstances to reach the appropriate recommendation of degree of discipline, the court determines that, among other things, a six-month actual suspension with a two-year probation would be appropriate to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys.

VI. RECOMMENDED DISCIPLINE

Accordingly, the court hereby recommends that respondent **ARTHUR GOOTKIN LAWRENCE** be suspended from the practice of law for one year, that execution of that suspension be stayed, and that respondent be placed on probation for two years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first six months of probation.

2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;
3. Respondent must maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will not be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.
4. Within 30 days from the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
5. Respondent is to submit written quarterly reports to the California State Bar's Office of Probation on each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury under the laws of the State of California, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct of the State Bar, and all conditions of this

probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

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

6. Subject to the proper good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.
7. Unless respondent previously completed the State Bar Ethics School within the prior two years, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School within one year of the effective date of discipline herein, given periodically by the State Bar at either 180 Howard Street, San Francisco, California 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. (Rules Proc. of State Bar, rule 290.) Arrangements to attend the Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201);
8. If respondent possesses client funds at any time during the period covered by a

required quarterly report, respondent must file with each required report a certificate from respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:

- a. Respondent has maintained a bank account authorized to do business in State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Client's Funds Account";
- b. Respondent has kept and maintained the following:
 - i. a written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account,
 - iii. all bank statements and cancelled checks for each client trust account; and,

iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

9. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter;

10. At the expiration of the period of probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for one year that is stayed will be satisfied and that suspension must be terminated.

10. At the expiration of the period of probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for one year that is stayed will be satisfied and that suspension must be terminated.

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination since he was previously ordered to do so in S140198. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage.

It is recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20(a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. 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.⁵

VII. COSTS

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

Dated: September 9, 2008


RICHARD A. PLATEL
Judge of the State Bar Court

⁵Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. 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 September 10, 2008, I deposited a true copy of the following document(s):

DECISION

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

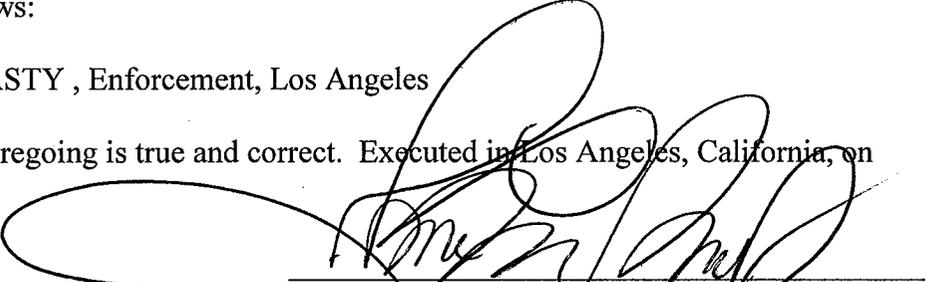
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID ALAN CLARE
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802

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

BITA SHASTY , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 10, 2008.



Johnnie Lee Smith
Case Administrator
State Bar Court