

**FILED****OCT 24 2008**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**PUBLIC MATTER**

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>07-O-14179-RAH</b>
	)	
<b>DANIEL S. GLASER,</b>	)	<b>DECISION</b>
	)	
<b>Member No. 172056,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**1. INTRODUCTION**

In this original proceeding, respondent Daniel S. Glaser ("respondent") and the Office of the Chief Trial Counsel of the State Bar of California entered into a detailed stipulation, describing the factual background and the admitted probation conditions, respondent's notice of those conditions, and their violation. The facts set forth below are based on the facts contained in the stipulation and the documents admitted into evidence in this matter. No oral testimony was received at trial. Respondent represented himself, and the Office of the Chief Trial Counsel was represented by Deputy Trial Counsel Brandon K. Tady.

The Office of the Chief Trial Counsel seeks an actual suspension of two years for respondent's misconduct. Respondent requests that the court suspend him for no more than two months. For the reasons set forth below, the court finds that, among other things, a ninety day actual suspension, with a period of probation and conditions attached thereto, would be

appropriate for respondent's misconduct. Further, respondent must remain suspended until payment of the outstanding restitution, plus interest.

## **2. PROCEDURAL HISTORY**

This proceeding was initiated by the Office of the Chief Trial Counsel filing a Notice of Disciplinary Charges ("NDC") against respondent on December 17, 2007.

Respondent filed a response to the NDC on March 6, 2008, and an amended response to the NDC on May 27, 2008.

Respondent did not file a pretrial statement, as ordered by the court on April 30, 2008. As a result, on May 30, 2008, the court ordered that respondent was precluded from offering testimonial or documentary evidence (except his own testimony) in the culpability phase of the trial. He was, however, permitted to offer evidence in mitigation in the form of his own declaration and declarations from character witnesses. Given that the parties had reached a stipulation, on June 3, 2008, the court held a status conference in lieu of trial. In mitigation, the declarations of three witnesses were submitted for review by the Deputy Trial Counsel, who stipulated to their admission into evidence. In addition, a briefing schedule was established for the parties' post trial briefs. The briefs were ordered to be filed by June 27, 2008, and the court specifically noted that any briefs filed after that point would not be considered. The Office of the Chief Trial Counsel timely filed its post trial brief. The matter was taken under submission on June 29, 2008. On July 29, 2008, respondent sought to file a document entitled "Daniel Glaser's Declaration Regarding Mitigation." While marked as filed, this declaration was not considered by the court, as it was filed over a month after the deadline imposed by the court, and was therefore, untimely.

### **3. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in the State of California on December 1, 1994 and since that time has been an attorney at law and a member of the State Bar of California.

#### **B. Count One**

##### **1. Facts.**

On May 15, 2006, respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition ("Stipulation") with the State Bar of California, Office of the Chief Trial Counsel, in Case Nos. 05-O-00982 and 05-O-03433. On May 23, 2006, the Hearing Department of the State Bar Court filed an Order approving the Stipulation and recommending, among other things, that respondent be actually suspended and placed on probation with conditions ("Order"). On May 24, 2006, the Order was properly served on respondent, by first class mail through the United States Postal Service, to the address respondent provided to the State Bar. Respondent received the order.

On September 7, 2006, the California Supreme Court filed an Order in Case No. S144705 (State Bar Court Case Nos. 05-O-00982 and 05-O-03433) ordering that respondent be suspended from the practice of law for one year, that execution of suspension be stayed, and that he be placed on probation for two years on the condition that he be actually suspended for thirty days. The Supreme Court further ordered respondent to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving the Stipulation filed on September 7, 2006 ("Supreme Court Order"). Respondent was properly served with the Supreme Court Order by the Clerk of the Supreme Court. The Supreme Court Order and suspension became effective on October 7, 2006.

Pursuant to the Supreme Court Order, respondent was required to comply with certain conditions of probation including the following:

- a. comply with the provisions of the State Bar Act and Rules of Professional Conduct during the imposed probation period;
- b. submit to the Office of Probation written quarterly reports each January 10, April 10, July 10, and October 10 of the probation period, certifying under penalty of perjury whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter;
- c. make restitution in the principal amount of \$1000 to the State Bar's Client Security Fund ("CSF") with interest accruing at the rate of 10% per annum from January 6, 2005;
- d. pay monthly restitution to the CSF with a minimum payment of \$100;
- e. make restitution in the principal amount of \$2,890 to attorney David R. Lucchese with interest accruing at the rate of 10% per annum from April 8, 2005;
- f. pay attorney David R. Lucchese monthly with a minimum payment of \$160.55;
- g. provide to the Office of Probation, within one year of the effective date of discipline, satisfactory proof of attendance at a session of the Ethics School and proof of passage of the test given at the end of that session.

In addition, respondent was also required to provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE") within one year after the effective date of the Supreme Court Order.

On or about September 20, 2006, the Office of Probation wrote a letter to respondent in which it reminded respondent of the terms and conditions of the Stipulation and Order. This

letter also listed the reporting due dates for the quarterly reports, the MPRE requirement, the Ethics School requirements, and the terms and conditions of restitution. Attached to the September 20, 2006, letter was a copy of the Supreme Order, a copy of the portion of the Stipulation setting forth the conditions of respondent's probation, an MPRE schedule, an Office of Probation Proof of Payment Instructions, information about Ethics School including a schedule and a blank application form, and quarterly reporting instructions. The letter from the Office of Probation to respondent was dated and mailed on September 20, 2006. Respondent received the letter.

Respondent filed his first quarterly report on January 12, 2007. This quarterly report was due on January 10, 2007. Respondent did not file quarterly reports due April 10, July 10, and October 10, 2007, and January 10 and April 10, 2008. Respondent did not make any restitution payments to the CSF as required by the Supreme Court Order, nor did he make any restitution payments to attorney David R. Lucchese, also required by the Supreme Court Order.

Respondent did not file a motion with the court requesting modification of the conditions of probation requiring him to make minimum monthly restitution payments in the amount of \$100 to the CSF and \$160.55 to David R. Lucchese. While respondent attempted to properly enroll in Ethics School, his check in the amount of \$150 for his enrollment fee in Ethics School was returned for non-sufficient funds.

## 2. Conclusions of Law.

Business and Professions Code section 6068, subdivision (k)<sup>1</sup> requires an attorney to comply with all conditions attached to a disciplinary probation, including a probation imposed with the concurrence of the attorney. As set forth above, respondent failed to comply with the conditions of his probation by not timely filing, or not filing at all, quarterly reports due January

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<sup>1</sup> Unless otherwise noted, all references to "section(s)" are to the Business and Professions Code.

10, April 10, July 10 and October 10, 2007; and by not making restitution as ordered by the Supreme Court. As such, respondent violated section 6068, subdivision (k).

**4. LEVEL OF DISCIPLINE**

**A. Factors in Mitigation**

Standard 1.2(e)(v). Respondent spontaneously agreed to cooperate in this disciplinary proceeding by participating in the preparation of a stipulation of facts as to the current misconduct, and, as such, he is entitled to some mitigation.

Standard 1.2(e)(vi). The court received into evidence three declarations, from John Glaser (respondent's father), Marlene Glaser (respondent's mother), and Julie Fuld (respondent's sister), all for the purpose of providing evidence of respondent's good character. The court has given very minimal weight to these declarations, in light of the fact that they do not represent an extraordinary demonstration of good character from a wide range of references. In addition, the declarations appear to be simply copies of a generic statement, even including the same language on each form, despite its inapplicability to the declarant (e.g., respondent's father noting that his "brother" made a mistake in not paying what he owed.)

**B. Factors in Aggravation**

Standard 1.2(b)(i). Respondent has a prior record of discipline. In the underlying case, case numbers 05-O-00982 and 05-O-03433, respondent stipulated to culpability for a violation of section 6106 [moral turpitude for misrepresentations to a court and to opposing counsel], two violations of section 6103 [failure to comply with a court order], and two violations of section 6068, subdivision (o)(3) [failing to report sanctions]. The Supreme Court ordered that respondent be suspended from the practice of law for one year; the execution of said suspension was stayed; and respondent was placed on probation for two years on conditions including a thirty day actual suspension. This prior record is an aggravating factor.

Standard 1.2(b)(ii). Respondent engaged in multiple acts of misconduct.<sup>2</sup>

Standard 1.2(b)(iii). Respondent also failed to file quarterly reports due January 10 and April 10, 2008, thereby engaging in further violations of section 6068, subdivision (k).

## 5. DISCUSSION

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 set forth the purposes of disciplinary proceedings and sanctions as “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.”

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In determining the appropriate level of discipline, the court looks first to the Standards for Attorney Sanctions for Professional Misconduct for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 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 Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

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<sup>2</sup> In its brief, the Office of the Chief Trial Counsel contends that respondent’s demonstrated indifference and lack of cooperation should also be considered as aggravating circumstances. However, the court finds that there is no clear and convincing evidence that respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct apart from that shown by his failure to comply with certain probation conditions which forms the basis for culpability in this matter. Furthermore, the court declines to find respondent’s lack of cooperation, particularly during pretrial proceedings, as an aggravating circumstance, as respondent was previously sanctioned by the court for his lack of cooperation during pretrial proceedings.

Standard 2.6 requires the court to impose disbarment or suspension for a violation of section 6068, with due regard for the purposes of imposing discipline. 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.)

Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.); *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) As the Review Department of the State Bar Court noted in *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151:

The violation of a probation condition significantly related to the attorney’s prior misconduct merits the greatest discipline, especially if the violation raises a serious concern about the need to protect the public or shows the attorney’s failure to undertake steps toward rehabilitation. (*In the Matter of Hunter*, [(Review Dept. 1994)], 3 Cal. State Bar Ct. Rptr. at p. 78; *In the Matter of Potack*, [Review Dept. 1991], 1 Cal. State Bar Ct. Rptr. at p. 540.) By contrast, the least discipline is appropriate for the violation of a less important probation condition, particularly if the violation does not call into question the need for public protection or the attorney’s progress toward rehabilitation. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)



The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

Filing quarterly reports and paying restitution are important steps towards an attorney's rehabilitation. (*In the Matter of Broderick, supra*, 3 Cal. State Bar Ct. Rptr. at p. 151.) "[A] probation 'reporting requirement permits the State Bar to monitor [an attorney probationer's] compliance with professional standards.'" (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) The Review Department has also pointedly recognized the importance of paying restitution, noting: "We cannot emphasize enough the importance of timely restitution payments as central to the rehabilitative process." (*In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 682.) Furthermore, as the Review Department noted in *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 312:

The Supreme Court has held that the "significance of restitution is its probative value as an indicator of rehabilitation, not the repayment of the underlying indebtedness." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1093.) Requiring restitution serves the rehabilitative and public protection goals of disciplinary probation by forcing attorneys to confront in concrete terms the consequences of the attorney's misconduct. (*Brookman v. State Bar*, [(1988)], 46 Cal.3d at p. 1009; *In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 537.) Thus a probationer's attitude toward the restitution is a significant factor to be weighed. (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1093.)

In this matter, respondent failed to timely pay restitution and failed to either file or timely file certain quarterly reports. In determining the appropriate discipline to recommend in this matter, the court notes that respondent's violations of probation are related to his prior misconduct, in that they both involve a seeming inability to comply with court orders and professional duties. The review department opinion in *In the Matter of Gorman* (Review Dept.

2003) 4 Cal. State Bar Ct. Rptr. 567, is instructive on the issue of the appropriate discipline in this matter. There, Gorman was two months' late in making his restitution payment of \$620 of the principal amount due, and was nine months' late in making the interest payment. However, he did eventually make the payment. He also did not timely attend the State Bar's Ethics School, as ordered. He received 30 days' actual suspension. In this case, respondent's violations were somewhat more serious, in that his restitution amounts were somewhat higher and were not paid, and he did not file or timely file certain quarterly reports.

In addition, the case of *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678 also provides guidance to the court. In that matter, Laden received a 90-day actual suspension for numerous untimely restitution payments and several delinquent quarterly reports. Laden's restitution obligation was almost \$10,000, and he was late in making 19 of 27 payments in a two year period. There was evidence of Laden's inability to pay, but also evidence that he kept in touch with the client due the payments, informing her of his financial condition. The Review Department noted that it would have considered a greater level of discipline, were it not for his substantial mitigation evidence.

The Office of the Chief Trial Counsel requests that this court recommend the imposition of two years' actual suspension for respondent's misconduct. However, the Office of the Chief Trial Counsel cites no authority for such a recommendation, given the misconduct stipulated to by respondent. As such, the Office of the Chief Trial Counsel's recommended discipline is rejected as unduly harsh.

The court finds that the misconduct in this matter is closer to that in the *Laden* matter than the misconduct in either the *Gorman* case or the other cases cited by the Office of the Chief Trial Counsel. While the amount of the total restitution Laden was obligated to pay was far

greater than respondent's obligation, Laden did make a concerted effort to pay the amounts due. Both respondent and Laden had a similar record as to late or missed quarterly reports.

After considering the need to protect the public and rehabilitate respondent, and based upon the facts and circumstances of this case, the court finds that the appropriate discipline to recommend in this matter includes a lengthy period of stayed suspension, a substantial period of probation, and a period of actual suspension, to impress upon respondent his need to closely heed the conditions of his probation and to seek a modification or extension of his probation conditions from the State Bar Court before he fails to timely comply with the conditions of his probation. In addition, given the fact that restitution remains unpaid, the actual suspension will continue until such restitution is paid, as an incentive to respondent to be proactive in his efforts to satisfy his restitution obligations.

**6. RECOMMENDED DISCIPLINE**

IT IS HEREBY RECOMMENDED that respondent Daniel S. Glaser be suspended from the practice of law for three years. It is further recommended that execution of that suspension be stayed, and that he 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 ninety days of the period of his probation, and until he provides proof of payment to the State Bar's Office of Probation of the following amounts in restitution:
  - a. \$1,000.00 to the State Bar's Client Security Fund, plus interest accruing at the rate of 10% per annum from January 6, 2005, and costs (in accordance with Business and Professions Code section 6140.5);
  - b. \$2,890.00 to David R. Lucchese, plus interest accruing at the rate of 10% per annum from April 8, 2005 (or to the Client Security Fund to the extent of any

payment from the fund to David R. Lucchese, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

If respondent remains actually suspended for two years or more, it is further recommended that respondent remain suspended until respondent shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law, pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;

3. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the State Bar's Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

4. Respondent must submit written quarterly reports to the State Bar's Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (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 twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the State Bar's Office of Probation which are directed to respondent personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;

6. Within one year after the effective date of the discipline herein, respondent must provide to the State Bar's Office of Probation satisfactory proof of attendance at a session of the Ethics School, 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, and passage of the test given at the end of such session, unless respondent has already provided proof to the State Bar's Office of Probation that he has taken said course and passed such test within two years prior to the effective date of the Supreme Court order imposing discipline in this matter. Arrangements to attend 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 ("MCLE") requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201);

7. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter;

8. At the expiration of the period of this probation, if respondent has complied with all the conditions of probation, the order of the Supreme Court suspending respondent from the practice of law for three years will be satisfied and that suspension will be terminated.

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination ("MPRE") administered by the National Conference of Bar Examiners, Multistate Professional Responsibility Examination Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the State Bar's Office of Probation within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of his actual suspension, whichever is later, unless respondent has already provided proof to the State Bar's Office of Probation that he has taken and passed the MPRE within two years prior to the effective date of the Supreme Court order imposing discipline in this matter. **Failure to pass the Multistate Professional Responsibility Examination within the specified time results in actual suspension by the Review Department, without further hearing, until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar of California.**

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.<sup>3</sup>

7. **COSTS**

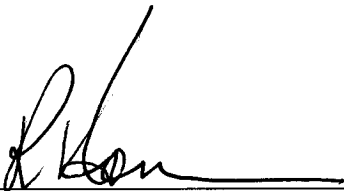
It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Until costs are paid in full,

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<sup>3</sup>Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

respondent will remain actually suspended from the practice of law unless relief is obtained under rule 282 of the Rules of Procedure of the State Bar of California.

Dated: October 24, 2008

  
\_\_\_\_\_  
RICHARD A. HONN  
Judge of the State Bar Court

## 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 October 24, 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:

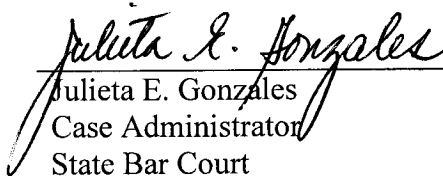
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DANIEL S GLASER ESQ  
BINDER & ASSOCIATES  
283 S LAKE AVE STE 200  
PASADENA, CA 91101

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

Brandon K. Tady, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 24, 2008.

  
\_\_\_\_\_  
Julieta E. Gonzales  
Case Administrator  
State Bar Court