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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **JAMES W. BRAVOS** A Member of the State Bar.	**No. 08-PM-10984** **OPINION ON REVIEW AND ORDER**

In this probation revocation case, the Office of Probation of the State Bar (State Bar) seeks review of the hearing judge's order recommending that James W. Bravos's probation be revoked and that he receive a 90-day period of actual suspension. It is undisputed that Bravos willfully violated the conditions of probation by failing to contact his probation officer, filing his quarterly and CPA reports late, making insufficient and untimely restitution payments and failing to attend Ethics School in the time period ordered by the Supreme Court. Based on these violations, the State Bar contends that the recommended period of actual suspension should be increased to two years, arguing that Bravos did not adequately prove any circumstances in mitigation, and the hearing judge should have found an additional factor in aggravation. Bravos contends that the hearing judge's discipline recommendation should be adopted. We have independently reviewed the record (Cal. Rules of Court, rule 9.12), and conclude that Bravos's repeated failure to timely comply with virtually all of his probation conditions warrants increasing the recommended discipline to include one year of actual suspension and until Bravos pays restitution.

I. PROCEDURAL HISTORY

On March 12, 2008, the State Bar filed a motion to revoke Bravos's probation. On April 14, 2008, Bravos filed his opposition to the motion, including his declaration in response to the alleged probation violations. A hearing was held, and the parties filed a partial stipulation as to undisputed facts, on May 28, 2008. Other than his declaration, Bravos did not offer any testimony. On July 23, 2008, the hearing judge filed his decision and order placing Bravos on inactive enrollment under Business and Professions Code section 6007, subdivision (d).[1] Upon Bravos's motion, we terminated his inactive enrollment effective November 18, 2008, as he had been inactive for longer than the 90 days' actual suspension recommended by the hearing judge.

II. FINDINGS OF FACT AND CULPABILITY

A. Bravos's Prior Record of Discipline Imposing Probation

Bravos was admitted to practice law on November 7, 1988. The misconduct in Bravos's prior discipline arose from his representation of one client, and trust account violations unrelated to that client. In the client matter, he failed to attend three case management conferences, a trial-setting conference, a mediation and rescheduled mediation, and a hearing on an order to show cause regarding his failure to appear. For those absences, the superior court ordered Bravos to pay $3,712.50 in sanctions to the plaintiffs and their counsel, Christopher Enge. In that prior matter, Bravos stipulated that he was culpable of violating: 1) rule 3-110(A) of the Rules of Professional Conduct[2] (failure to perform competently); 2) section 6068, subdivision (o)(3) (failure to report sanctions); and 3) section 6103 (failure to obey court orders).

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[1]This section provides that an attorney may be placed on involuntary inactive status if it is recommended that he or she be actually suspended due to a violation of probation conditions. All further statutory references are to the Business and Professions Code.

[2]All further references to "rules" are to the Rules of Professional Conduct unless otherwise noted.

In the trust account matter, Bravos stipulated to commingling personal funds with the funds in his client trust account (CTA), authorizing electronic debits and issuing checks from the CTA to pay for his office and/or personal expenses, and issuing checks from the CTA with insufficient funds to cover them, all in violation of rule 4-100(A). No aggravating circumstances were present. Bravos received mitigation credit for his 14 years of practice without prior discipline, the lack of harm to his clients, and his cooperation with the State Bar. Additional mitigating circumstances included Bravos's emotional, family and financial problems caused by his wife's methamphetamine addiction for over 12 years. In February 2005, she left Bravos and their five children, ages two to 15, which forced him to reduce his workload and resulted in significant financial loss.

By order filed June 13, 2006, the California Supreme Court suspended Bravos for two years and until he complied with standard 1.4(c)(ii),[3] but stayed execution of the suspension on the condition that Bravos comply with all terms of his probation. He was placed on four years' probation with no period of actual suspension. The Supreme Court order was effective on July 13, 2006.

B. Bravos's Probation Violations

On July 10, 2006, the State Bar sent a letter to Bravos to remind him of certain terms and conditions of his probation and enclosed, among other things, the Supreme Court's order, the probation conditions, instruction sheets and/or forms for submitting quarterly reports and proof of restitution, along with scheduling and enrollment information for Ethics School. In addition, the State Bar faxed a copy of its July 10 letter to Bravos on October 25, 2006. Bravos received both letters.

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[3]This standard requires an attorney to prove his or her rehabilitation, present fitness to practice and present learning and ability in the law before the suspension will be terminated. All further references to "standards" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct unless otherwise noted.

Despite repeated reminders from the Office of Probation, Bravos was habitually delinquent in complying with the conditions of his probation, as outlined below:

1. Contact with the Office of Probation: Bravos was ordered to contact the Office of Probation to schedule a meeting to discuss the terms and conditions of probation within 30 days of the effective date of discipline, i.e., by August 12, 2006. Bravos did not do so. Instead, the Office of Probation contacted him on October 25, 2006, and conducted the meeting by telephone.

2. Completion of Ethics School: Bravos was required to attend and provide proof of completion of Ethics School by July 13, 2007. He did not complete Ethics School until February 7, 2008, and did not provide proof of its completion to the Office of Probation until April 8, 2008.

3. Quarterly Compliance Reports: During the probation period, Bravos was required to submit a written quarterly report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year, stating under penalty of perjury that he had complied with all provisions of the State Bar Act and Rules of Professional Conduct during the previous quarter. Bravos submitted the following untimely quarterly reports:

Date Due	Date Filed
1/10/07	2/7/07
4/10/07	7/5/07
7/10/07	1/11/08
10/10/07	1/11/08
1/10/08	1/11/08

4. Quarterly CPA Reports: With each quarterly report, Bravos was also ordered to file a report from a certified public accountant certifying specific information regarding Bravos's CTA and all other client property or securities in Bravos's possession (CPA report). If Bravos did not possess any client funds, property or securities, he was required to so declare under

penalty of perjury in each applicable quarterly report. Bravos was delinquent in filing all CPA reports, as follows:

Date Due	Date Filed
10/10/06	10/16/06
1/10/07	2/7/07
4/10/07	5/28/08 (submitted at hearing)
7/10/07	1/11/08
10/10/07	1/11/08
1/10/08	1/11/08

On April 8, 2008, the Office of Probation received Bravos's CPA report for the April 10, 2007 reporting period. On April 15, 2008, the Office of Probation sent Bravos a letter setting forth various deficiencies in the April 10, 2007 CPA report, noting that prior CPA reports had been filed erroneously, and requesting that Bravos correct the defects. He did not respond to this letter. Instead, Bravos submitted a supplement to the April 10, 2007 CPA report, and prior CPA reports, at the hearing on May 28, 2008.

5. Monthly Restitution Payments: Bravos was ordered to make restitution to Christopher Enge (or to the Client Security Fund, if applicable) in the total amount of $3,712.50, plus 10% interest per annum from November 17, 2003. Restitution was to be paid in monthly installments of $100, and Bravos was to provide proof of payment with each quarterly compliance report. He made only one payment to Enge, by check dated October 23, 2006, in the amount of $300, and neglected to provide satisfactory proof of this payment to the Office of Probation until February 7, 2007. Additionally, instead of paying the restitution ordered by the Supreme Court and set forth in the parties' stipulation, four days before the hearing in this matter, Bravos requested that Enge relieve him of this obligation by waiving the awarded sanctions. Enge informed Bravos that his clients declined to do so.

C. Order to Take the Multistate Professional Responsibility Examination (MPRE)

Although not a condition of probation, the Supreme Court also ordered Bravos to take and pass the MPRE by July 13, 2007. He failed to do so, and we therefore issued an order suspending him as of January 28, 2008. We terminated that suspension on April 18, 2008, upon receiving notice that Bravos had passed the exam.

D. Culpability

The parties are not disputing culpability. Pursuant to rule 561 of the Rules of Procedure of the State Bar, we agree with the hearing judge's conclusion that there is a preponderance of evidence that Bravos willfully violated the conditions of probation by failing to contact the Office of Probation, to file quarterly compliance and CPA reports on a timely basis, to pay restitution, and to attend Ethics School, as ordered by the Supreme Court.

III. DISCIPLINE

A. Aggravation

The hearing judge found several aggravating factors: 1) the original proceeding for which Bravos was on probation constituted one prior record of discipline (std. 1.2(b)(i)); 2) Bravos engaged in multiple acts of misconduct (std. 1.2(b)(ii)); 3) Bravos's failure to comply with his probation conditions made it difficult for the State Bar to monitor him, which was necessary to protect the public and courts and resulted in significant harm to the administration of justice (std. 1.2(b)(iv)); and 4) by failing to comply with his probation conditions even after receiving reminders from the Office of Probation, yet making no effort to seek modification of those conditions, Bravos displayed indifference toward rectification of or atonement for the consequences of his misconduct (std. 1.2(b)(v)). Neither Bravos nor the State Bar challenges the hearing judge's aggravation findings. The record reveals that they are supported by the evidence, and we therefore adopt them.

As an additional factor in aggravation, the State Bar requests that we treat Bravos's late completion of the MPRE as uncharged misconduct. As set forth above, Bravos was suspended from January 28 to April 18, 2008, for his failure to comply with the MPRE order. Although the State Bar was aware of Bravos's untimely completion of the MPRE prior to filing its motion to revoke probation, it did not raise the issue of uncharged misconduct until its closing argument in the hearing department. Further, the State Bar has never specified which rule or statute supports Bravos's culpability. Under these circumstances, we decline to find uncharged misconduct based on Bravos's failure to timely pass the MPRE. (See *Barnum v. State Bar* (1990) 52 Cal.3d 104, 109-110, fn. 4 [culpability finding properly dismissed where misconduct had not been charged in the notice and could not fairly form basis of discipline]; see also Rules Proc. of State Bar, rule 562.5 [probation revocation proceedings shall not be consolidated with any other proceeding].) Nevertheless, Bravos's failure to timely comply with the MPRE requirement is a relevant factor for consideration in our determination of the appropriate discipline as "it indicates that respondent is unable to act responsibly or obey the Supreme Court's order regarding his professional conduct." (*In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 331 [suspension for failing to pass MPRE is not prior discipline but factor to be considered in determining discipline].)

B. Mitigation

In mitigation, the hearing judge found that Bravos demonstrated candor to and cooperation with the State Bar by stipulating to facts (std. 1.2(e)(v)), and that he continued to experience extreme financial difficulties due to the absence of his spouse (std. 1.2(e)(iv)). We uphold the hearing judge's mitigation finding for Bravos's candor and cooperation, but do not adopt the finding as to severe financial difficulties.

The State Bar contends that Bravos is not entitled to any mitigation for the stipulation because the hearing judge ordered the parties to meet and confer about the facts, and Bravos did not agree to the undisputed facts until the day of the hearing. Although the hearing judge ordered them to discuss the possibility of a stipulation of undisputed facts, the parties were not required to reach such a stipulation. We agree with the hearing judge's determination that the stipulation facilitated the proceedings and warrants modest mitigation consideration. (Std. 1.2(e)(v).)

As for financial hardship, we find that Bravos failed to provide clear and convincing evidence that his current economic situation is a mitigating circumstance. We lack a complete picture of Bravos's financial condition because the record is devoid of any evidence pertaining to his income, assets or debts. Further, Bravos and the State Bar stipulated to the same financial difficulties in the prior proceeding in which Bravos was originally disciplined, and he was afforded mitigation credit for monetary hardship at that time. Fully aware of his own financial situation, Bravos should not have stipulated to a restitution condition he must have known he could not satisfy, and then never sought to modify it once he realized he would have trouble making even the first payment. Under these circumstances, Bravos failed to establish in the present case that his financial difficulties were extreme and resulted "from circumstances that [were] not reasonably foreseeable or that [were] beyond [his] control. [Citation.]" (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 311[respondent did not establish financial problems were unforeseeable when evidence presented in prior discipline proceeding demonstrated his limited income]; see also *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 509 [no mitigation for financial problems when respondent failed to introduce evidence about cause of financial difficulties].)

C. Level of Discipline

The hearing judge recommended a two-year stayed suspension and two years' probation, conditioned on 90 days' actual suspension. The State Bar contends that Bravos's probation violations necessitate an actual suspension of two years and until Bravos complies with standard 1.4(c)(ii). For any recommendation less than two years, the State Bar requests that Bravos at least remain suspended until he satisfies his restitution obligation. Bravos requests that we affirm the hearing judge's recommendation. We conclude that the facts and circumstances in this case warrant an actual suspension of one year and until Bravos satisfies his outstanding restitution obligation.

Fundamentally, the purpose of discipline is not to punish the attorney, but to protect the public. (Std. 1.3.) In assessing the proper level of discipline, we consider the standards, prior decisional law, and the facts and circumstances unique to this case. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.)

While there is no standard that specifically addresses probation violations brought pursuant to rule 560 of the Rules of Procedure, rule 562 provides that any actual suspension recommended shall not exceed the entire period of the stayed suspension. Moreover, standard 2.10 provides that for violations that are not otherwise specified, the misconduct shall result in reproval or suspension according to the gravity of the offense or harm, if any, to the victim. In light of Bravos's prior record of discipline, we also consider standard 1.7(a), which provides that the recommendation in the current proceeding shall be greater than that imposed in the prior matter. Since the standards provide for a broad range of discipline, we look to case law for further guidance.

We find that *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81, provides the most instruction regarding the appropriate level of discipline and supports our

recommendation. Hunter's misconduct in the probationary proceeding included failing to file his first quarterly report and failing to pay restitution. In aggravation, we took into account Hunter's one prior record of discipline, his indifference to rectifying the harm he caused when he failed to take adequate steps toward restitution, the filing of additional defective quarterly reports, and his failure to comply with pretrial procedures during the probation revocation proceedings. Hunter received mitigation for his emotional difficulties due to family problems and minimal mitigation for good character. The misconduct which led to Hunter's probation included two counts of misappropriating settlement funds totaling $1,421 and one count of failing to hold $600 in trust from a client's settlement proceeds to pay a doctor. In the probation revocation proceeding, we recommended the imposition of one year of actual suspension and until Hunter paid restitution.

The seriousness of the misconduct in the original discipline cases for which Hunter and Bravos received probation is comparable. Moreover, like Hunter, Bravos violated several probation conditions, which included failing to timely file his quarterly reports. Finally, each attorney's aggravating circumstances considerably outweigh any mitigating factors, and they both failed to fulfill their restitution obligations.

Bravos's untimely compliance with virtually all of his probation conditions reflects adversely on his rehabilitation efforts and demonstrates substantial indifference toward his probation responsibilities. In addition, his failure to make the $100 monthly restitution payments demonstrates his lack of understanding and concern for the purpose of his disciplinary probation and for his ethical responsibilities. Based on the record before us and our review of relevant case

law, we find that continued protection of the public warrants increasing the recommended discipline from 90 days to one year of actual suspension.[4]

Bravos must also pay restitution prior to resuming the active practice of law. His restitution obligation has been outstanding for over five years and Bravos has not made any serious effort to satisfy it. 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 the discipline system by forcing attorneys to confront the consequences of their misconduct. (See *Brookman v. State Bar* (1988) 46 Cal.3d 1004, 1009.)

IV. RECOMMENDATION

For the foregoing reasons, we recommend that the probation of James W. Bravos previously ordered in Supreme Court case no. S142430 be revoked. We further recommend that he be suspended for two years, that execution of the suspension be stayed, and that he be placed on two years' probation on the following conditions:

1. He must be suspended from the practice of law for the first year of probation and he will remain suspended until the following requirements are satisfied:

    i. He makes restitution to Christopher Enge in the amount of $3,712.50 plus 10% interest per annum from November 17, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Christopher Enge, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation; [5]

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[4]See, e.g., *Potack v. State Bar* (1991) 54 Cal.3d 132 [two-year actual suspension where attorney defaulted in probation revocation proceeding, failed to timely file and complete quarterly reports, failed to timely make restitution]; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138 [one-year actual suspension where attorney failed to make any payments towards restitution, filed no quarterly reports and failed to obtain required psychological counseling].

[5]The Office of Probation is to give Bravos credit for all payments he has previously made and furnished satisfactory proof.

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. (Std. 1.4(c)(ii).)

2. He must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone or, if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office of the State Bar and to the State Bar's Office of Probation;

4. He 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, Bravos 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 30 days, that report must be submitted on the reporting due date for the next calendar quarter and will cover the extended period. In addition to all quarterly reports, he must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than 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, he must answer fully, promptly and truthfully, any inquiries of the State Bar's Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with these probation conditions.[6]

The period of probation will commence on the effective date of the order of the Supreme Court imposing discipline in this proceeding. At the expiration of the period, if Bravos has complied with all of the terms and conditions of probation, the two-year period of stayed suspension will be satisfied and terminated.

RULE 9.20

We further recommend that Bravos be ordered to comply with rule 9.20, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and

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[6]We do not recommend that Bravos be ordered to successfully complete Ethics School or the MPRE because he recently completed both requirements.

40 days, respectively, from the effective date of the Supreme Court order. 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.

COSTS

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

ORDER REGARDING INACTIVE ENROLLMENT

The requirements of Business and Professions Code section 6007, subdivision (d)(1), have been met in that Bravos was subject to a stayed suspension, he has violated probation conditions, and it is recommended that he be actually suspended as a result of the violations.

We therefore order that James William Bravos be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment is effective 30 days following service of this order. Bravos's inactive enrollment will be terminated in the future in accordance with Business and Professions Code section 6007, subdivision (d)(2). Pursuant to subdivision (d)(3) of that same section, we also recommend that Bravos receive credit for the period of time he will be inactively enrolled pursuant to this order, and for the period of time he was previously inactively enrolled from July 26, 2008 to November 18, 2008.

REMKE, P. J.

We concur:

EPSTEIN, J.

PURCELL, J.

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

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 15, 2009, I deposited a true copy of the following document(s):

OPINION ON REVIEW AND ORDER FILED JUNE 15, 2009

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

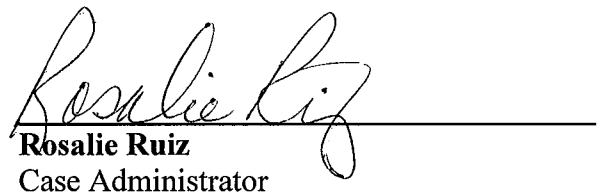
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES W. BRAVOS
LAW OFC JAMES WILLIAM BRAVOS
2185 SUNSET CLIFFS BLVD
SAN DIEGO, CA 92107

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

TERRIE L. GOLDADE, Probation Unit, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 15, 2009.



Rosalie Ruiz
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State Bar Court