

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 09-O-12257-LMA;
)	09-N-16548 (09-O-17184) (Cons.)
FRANK ANGELO D'ALFONSI)	ORDER INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 146104)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
A Member of the State Bar.)	

I. INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) alleging that respondent Frank Angelo D'Alfonsi did not comply with rule 9.20 of the California Rules of Court¹ or with certain probation conditions as ordered by the Supreme Court as well as engaging in misconduct in one client matter.

The State Bar was represented by Mark Hartman. Respondent did not participate either in person or by counsel.

For the reasons stated below, it is recommended that respondent be disbarred and that he be ordered to make restitution as set forth below.

¹Future references to rule are to this source. Prior to January 1, 2007, rule 9.20 was numbered rule 955.

II. SIGNIFICANT PROCEDURAL HISTORY

A. Case no. 09-O-12257

The Notice of Disciplinary Charges (NDC) was filed and properly served on respondent on August 18, 2009, by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar (official address). (Bus. & Prof. Code §6002.1, subd. (c)²; Rules Proc. of State Bar, rules 60(b) and 583.) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was not returned as undeliverable or for any other reason.

On August 19, 2009, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with a notice scheduling a status conference on October 5, 2009. Respondent did not appear at the status conference. On October 5, 2009, an order memorializing the status conference was properly served on him at his official address.

Respondent did not file a response to the NDC. On October 15, 2009, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official address. (Rules Proc. of State Bar, rule 200(a), (b).) The motion advised respondent that the State Bar would seek minimum discipline of disbarment if he was found culpable. (Rules Proc. of State Bar, rule 200(a)(3).)

Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on November 2, 2009, by certified mail, return receipt requested at his official address. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order.

²Future references to section are to this source.

B. Case no. 09-N-16548 (09-O-17184)

The NDC was filed and properly served on respondent on November 10, 2009, by certified mail, return receipt requested, at his official address.

On November 12, 2009, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with a notice scheduling a status conference on December 14, 2009. Respondent did not appear at the status conference. On December 14, 2009, an order memorializing the status conference was properly served on him at his official address.³

Respondent did not file a response to the NDC. On December 10, 2009, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official address. The motion advised respondent that the State Bar would seek minimum discipline of disbarment if he was found culpable.

Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on December 29, 2009, by certified mail, return receipt requested at his official address. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order.

The court judicially notices its records pursuant to Evidence Code section 452(d) which indicate that, as to each of the consolidated cases, the notices scheduling status conferences, orders memorializing the status conferences and orders entering respondent's default were returned as undeliverable to the State Bar Court.

The court's and the State Bar's efforts to locate or contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of these

³Also at this status conference, the instant case was consolidated with case no. 09-O-12257.

proceedings, including notice by certified mail and by facsimile and email,⁴ to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The case was submitted for decision on February 22, 2010. However, the court vacates this submission date due to the filing of the State Bar's motion for late filing of its default brief.

Good cause appearing, the State Bar's motion is GRANTED and the default brief is deemed filed on March 5, 2010.

The matter stands submitted as of March 5, 2010.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDCs as they are deemed admitted and no further proof is required to establish the truth of those allegations. (Section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).) The findings are also based upon matters admitted into evidence or judicially noticed.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 12, 1990, and has been a member of the State Bar at all times since.

⁴The State Bar's letters of September 17 and December 3, 2009 were successfully faxed to respondent's official membership records facsimile number and emailed. Other attempted contacts by mail, telephone and to another email address were unsuccessful.

B. Case no. 09-O-12557 (The Shimono Matter)

1. Facts

On February 23, 2009, Hisamitsu Shimono hired respondent to represent him in the purchase of a business, JF Foot Massage. He wanted respondent to prepare the purchase contract and other license applications and documentation. He paid respondent \$1,500 as attorney's fees. The parties did not execute a written fee agreement.

On February 23, 2009, Shimono also gave respondent a check for \$35,000 as his down payment for the purchase of the business. Respondent was to hold these funds and then transfer them to the seller of JF Foot Massage. On that same date, respondent deposited both of Shimono's checks into his bank account, number 16002XXX at First National Bank of California (hereafter FNB account). The FNB account was not identified as an attorney-client trust account when he opened the account, nor was the interest it earned sent to the State Bar pursuant to IOLTA. Even if respondent thought the account was properly identified, he did not maintain it as an attorney-client trust account.

Respondent labeled, or caused to be labeled, the checks themselves to identify the account as "Client Trust Fund."

Shimono's checks cleared respondent's FNB account on or about February 24, 2009. Respondent received Shimono's \$35,000 and \$1,500.

Respondent misappropriated \$35,000 of Shimono's funds to his own personal use. He did not forward the funds to the seller of JF Foot Massage as instructed nor did he expend the funds on Shimono's behalf. On April 14, 2009, respondent wrote a letter to Shimono in which he admitted taking the funds.

Respondent did not properly establish an attorney-client trust account with First National Bank of Northern California. Although he used the description "Client Trust Fund" on the

checks, the FNB account was an individual, rather than a trust, account. Respondent did not deposit Shimono's funds in an attorney-client trust account.

Further, respondent did not maintain Shimono's funds in an attorney-client trust account. As of April 6, 2009, the balance in the FNB account was \$100.78. No funds were expended on Shimono's behalf from this account after his funds were deposited on February 23, 2009,

Prior to depositing Shimono's checks, the balance in the FNB account was approximately \$80.82. On February 25, 2009, respondent withdrew \$30,000 for his own use, leaving a balance of \$5,613.39 as of February 26, 2009.

On March 31, 2009, respondent gave Shimono a postdated check written on the FNB account. Check no. 1063 was dated April 2, 2009, in the amount of \$35,000 and represented the return of Shimono's funds. Respondent represented to Shimono that the check would be good on April 2, 2009. On March 31, 2009, the balance in respondent's FNB account was approximately \$3,175.37.

Between April 1-3, 2009, the balance in the FNB account was approximately \$223.02.

Respondent made no deposits to the FNB account between March 31 and April 3, 2009.

Between March 31 and April 3, 2009, respondent made the following withdrawals from the FNB account:

- (i) On March 31, 2009, a point of service transaction (hereafter POS transaction) for \$17.95 for CCBill.com AZ;
- (ii) On March 31, 2009, a POS transaction for \$41.67 at King Wah Restaurant in Daly City;
- (iii) On March 31, 2009, check no. 1062, issued on March 23, 2009, in the sum of \$1,800 to Robert Costa cleared the account;
- (iv) On April 1, 2009, a POS transaction for CCBill.com AZ in the sum of \$29.95; and
- (v) On April 3, 2009, respondent withdrew \$100.

On April 2, 2009, respondent knowingly made a false oral statement to Shimono that the check did not clear due to bank error. In fact, the check did not clear because there were insufficient funds in the account. As of April 3, 2009 there were approximately \$200 in this account. Respondent knew or should have known there were insufficient funds in the account to cover the check for \$35,000.

Respondent's statement to Shimono was material because he was making representations regarding the return of \$35,000 in funds that he misappropriated from Shimono. He made this statement wilfully and with knowledge that the statement was false or misleading. He intended to deceive Shimono.

Respondent did not advise Shimono between February 25 and April 13, 2009 that he had misappropriated the funds.

Between October 24, 2008 and June 17, 2009, respondent completed over 100 POS transactions from the FNB account for personal, non-client related matters including, but not limited to, the following:⁵

DATE	LOCATION	AMOUNT
10/27/08	Walgreens	\$202.00
11/5/08	Walgreens	20.61
11/5/08	Walgreens	6.48
11/5/08	Walgreens	33.99
11/12/08	Walgreens	14.06
11/12/08	Toys R Us	40.01
12/23/08	King Wah Seafood	37.34
12/24/08	Target	156.52

Respondent also deposited client funds into the FNB account.

Respondent did not prepare the purchase agreement, licensing papers or anything at all on Shimono's behalf in connection with the purchase of JF Foot Massage. He also did not maintain

⁵The NDC alleged two other POS transactions in February and March of 2008. The court did not consider them as they were not within the time parameters set forth in the NDC for the alleged violation.

the \$35,000 in funds he received from Shimono to convey to the seller of JF Foot Massage after the purchase agreement and licensing papers were duly completed.

Respondent did not earn the \$1,500 in fees he received from Shimono. Shimono completed the purchase of JF Foot Massage without respondent's assistance.

Respondent did not refund the \$1,500 in fees that he obtained from Shimono.

The total amount of the unearned fees and the amount misappropriated from Shimono is \$36,500.

On June 3, 2009, a State Bar investigator wrote to respondent at his official address regarding the Shimono complaint, requesting a response to the allegation that he misappropriated Shimono's funds and that he provide specified documents. Respondent received the letter.

On June 18, 2009, respondent faxed a letter to the investigator seeking an extension of two weeks to prepare all the necessary documents. The request was granted and respondent received the letter in that regard; however, respondent provided no information to the State Bar regarding the Shimono complaint.

2. Legal Conclusions

a. Counts One and Four- Section 6106 (Moral Turpitude)

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by misappropriating Shimono's \$35,000 for his own use and by falsely stating to Shimono that the postdated check did not clear due to bank error when respondent knew or should have known there were insufficient funds in the FNB account to cover the check. Accordingly, he committed acts of moral turpitude in wilful violation of section 6106.

b. Counts Two & Five - Rule of Professional Conduct,⁶ Rule 4-100(A) (Maintaining Client Funds in Trust Account & Commingling)

Rule 4-100(A) requires, in relevant part, that an attorney place all funds held for the benefit of clients, including advances for costs and expenses, in a client trust account.

There is clear and convincing evidence that respondent wilfully violated rule 4-100(A) by not depositing and maintaining Shimono's funds in a trust account.

There is not clear and convincing evidence that respondent commingled his personal and client funds because the FNB account was not a client trust account but a personal account in which respondent was entitled to keep his personal funds.

c. Count Three- Section 6068, subd. (m) (Communication)

In relevant part, section 6068, subdivision (m) requires an attorney to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not advising Shimono that he had misappropriated Shimono's funds, respondent did not keep Shimono reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

d. Count Six- Rule 3-110(A) (Competence)

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

By not preparing the necessary documents for Shimono's purchase of JF Foot Massage and by not maintaining Shimono's \$35,000 to convey to the seller of the business, respondent

⁶Future references to rule are to this source.

intentionally, recklessly or repeatedly did not perform competently the services for which Shimono retained him in wilful violation of rule 3-110(A).

e. Count Seven- Rule of Professional Conduct 3-700(D)(2) (Unearned Fees)

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. This rule does not apply to true retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a matter.

By not refunding Shimono's \$1,500 that respondent did not earn, respondent did not return an advanced, unearned fee in wilful violation of Rule of Professional Conduct 3-700(D)(2).

f. Count Eight - Section 6068, subd. (i) (Not Participating in Disciplinary Investigation)

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By not responding to the request for information and documents regarding the Shimono complaint, respondent did not participate in the investigation of the allegations of misconduct in wilful violation of 6068, subdivision (i).

C. Case no. 09-N-16548 (The Rule 9.20 Matter)

1. Facts

On June 16, 2009, the California Supreme Court filed order no. S172296 (State Bar Court case no. 03-0-03682 (04-O-14083; 04-O-14180)) which required respondent to comply with rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the order. The order was effective on July

16, 2009. (Rule 9.18(a).) Accordingly, respondent was to comply with rule 9.20(c) no later than August 25, 2009.

The Supreme Court promptly sent respondent a copy of its order upon filing.⁷ A copy of it also was attached to the NDC in this proceeding.

Respondent wilfully violated the rule 9.20 order by failing to file proof of compliance as required by rule 9.20(c) prior to the deadline.

As of November 10, 2009, respondent had not filed with the State Bar Court the affidavit required by rule 9.20(c). He still has not done so.⁸ He has offered no explanation for his noncompliance with rule 9.20(c).

2. Legal Conclusions

In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him to do or to forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear.

By not complying with the Supreme Court's order directing his compliance with rule 9.20⁹, respondent wilfully disobeyed a court order in wilful violation of section 6103.

⁷Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires the Clerk to promptly transmit a copy of opinions and orders to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his or her duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

⁸Pursuant to Evidence Code section 452, subdivision (d), the court judicially notices that its records still do not contain a rule 9.20(c) affidavit from respondent.

⁹Failure to comply with rule 955 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

D. Case no. 09-O-17184 (The Probation Violation Matter)

1. Facts

On September 16, 2008, the State Bar Court filed a decision in State Bar Court case no. 03-0-03682 (04-O-14083; 04-O-14180) recommending discipline consisting of two years' stayed suspension; three years' probation with conditions including one year of actual suspension and until respondent complied with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,¹⁰ among other things. The court judicially notices its records which indicate that a copy of the decision was properly served upon respondent on that same date at his State Bar membership records address by first-class mail, postage prepaid.

As previously noted, on June 16, 2009, the California Supreme Court filed an order, S172296, accepting the State Bar Court's discipline recommendation and ordering respondent to comply with the conditions of probation recommended, including the following, with which respondent did not comply:

(a) Within 30 days of the effective date of discipline, contacting the Office of Probation (hereafter OP) to schedule a meeting to discuss the terms and conditions of probation.

Respondent did not do so and has not done so as of November 10, 2009.

(b) During the period of probation, submitting a written report to the OP on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect stating under penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report). Respondent has not submitted the quarterly report due on the 10th of October 2009 and has not done so as of November 10, 2009; and

¹⁰Future references to standard or std. are to this source.

(c) During the period of probation, selecting a licensed medical laboratory approved by the OP; furnishing to the laboratory such blood and/or urine samples as required; and causing the laboratory to provide the OP, at respondent's expense, a screening report on or before the tenth day of each month containing an analysis of respondent's blood and/or urine obtained not more than 10 days earlier. Respondent did not select a medical laboratory, furnish samples or cause the laboratory to provide any screening reports to the OP as required by the tenth of August, September, October or November, 2009.

2. Legal Conclusions

Section 6068, subdivision (k) requires an attorney to comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

By not contacting the OP; not submitting the October 10, 2009 quarterly report; and not complying with the laboratory testing condition as more fully described above, respondent did not comply with disciplinary probation conditions in wilful violation of section 6068, subdivision (k).

IV. FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)

Respondent's prior discipline record is an aggravating circumstance. (Std. 1.2(b)(i).) As previously discussed, in S172296 (State Bar Court case no. 03-0-03682 (04-O-14083; 04-O-14180)), the Supreme Court imposed discipline consisting of two years' stayed suspension; three years' probation with conditions including one year of actual suspension and until respondent complied with standard 1.4(c)(ii) In three client matters, respondent was found culpable of violating rules 3-110(A) (three counts), 3-700(D)(2) (two counts) and section 6068, subdivision

(m) (two counts) as well as one count each of violating rules 3-300 and 3-700(D)(1) and section 6106. Aggravating factors were client harm and multiple acts of misconduct. Mitigating factors included candor and cooperation, no prior discipline, physical and emotional difficulties and participation in the Lawyers' Assistance Program.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Respondent's failure to participate in proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) However, it warrants little weight in aggravation because this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

V. FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES

Respondent did not participate in these proceedings or present any mitigating circumstances pursuant to standard 1.2(e). Since respondent bears the burden of establishing mitigation by clear and convincing evidence, the court has no basis for finding mitigating factors.

VI. LEVEL OF DISCIPLINE

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public 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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) Discipline is progressive. (Std. 1.7.)

Standards 2.2(a) and (b), 2.3, 2.4(b), 2.6(a) and 2.10 apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for wilful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is one year actual suspension. The one-year “minimum discipline” set forth in the standard “is not faithful to the teachings of [the Supreme] court's decisions” and “should be regarded as a guideline, not an inflexible mandate.” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) In this case, no reason for deviation from the standards is apparent.

Moreover, respondent's wilful failure to comply with rule 9.20(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116,131; rule 9.20(d).) Disbarment has been consistently imposed by the Supreme Court as the sanction for noncompliance with rule 9.20. (*Bercovich v. State Bar, supra*, 50 Cal.3d at p. 131; *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1188; *Powers v. State Bar, supra*, 44 Cal.3d at p. 342.)

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given the opportunity to do so. He engaged in serious misconduct in one client matter; did not comply

with probation conditions imposed in his prior disciplinary record; and did not comply with rule 9.20(c). He did not participate in this proceeding and, therefore, did not present any mitigating circumstances for the court's consideration. In accordance with the standards and with rule 9.20(d) of the California Rules of Court, and in the absence of any mitigating factors, the court recommends respondent's disbarment as necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession.

It is also recommended that respondent be ordered to make restitution to Shiono. "Restitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (*Id.* at p. 1093.)

Under rule 291 of the Rules of Procedure, effective January 1, 2007, (1) respondent must reimburse the Client Security Fund (CSF) to the extent that the misconduct found in the proceeding results in the payment of funds pursuant to section 6140.5; and (2) unless otherwise ordered by the Supreme Court or unless relief has been granted under these rules, any reimbursement so ordered must be paid within 30 days following the effective date of the final disciplinary order or within 30 days following the CSF payment, whichever is later.

VII. DISCIPLINE RECOMMENDATION

It is hereby recommended that respondent Frank Angelo D'Alfonsi be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is recommended that respondent make restitution within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client

Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291) to Hisamitsu Shimono in the amount of \$36,500 plus 10% interest per annum from February 23, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Hisamitsu Shimono, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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 of 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 days of the effective date of the order showing his compliance with said order.

VIII. 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.

IX. ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: April ____, 2010

LUCY ARMENDARIZ
Judge of the State Bar Court

