

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: **10-O-02758-PEM**
)
JOSEPH ANTHONY PARKS) **DECISION**
)
)
Member No. 160473)
)
)
A Member of the State Bar.)

I. Introduction

In this disciplinary proceeding, respondent **Joseph Anthony Parks** is charged with multiple acts of misconduct involving several clients. The charged misconduct includes: (1) committing acts of moral turpitude; (2) misappropriating client funds; (3) commingling personal funds in a client trust account; (4) failing to notify a client of receipt of client funds; (5) failing to maintain client funds in trust accounts; and (6) failing to pay client funds promptly. This court finds, by clear and convincing evidence, that respondent is culpable of each of the charged allegations of misconduct. Based on the serious nature and extent of culpability, as well as the applicable mitigating and aggravating circumstances, the court recommends among other things, that respondent be suspended from the practice of law for four years, that execution of suspension be stayed, that he be placed on probation for five years and that he be suspended for a minimum of three years and until he shows proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 16, 2010. On January 21, 2011, the State Bar filed a first amended NDC. On January 24, 2011, respondent filed a response.

A three-day hearing was held on May 10, 11, and 12, 2011. The State Bar was represented by Deputy Trial Counsel Wonder Liang. Respondent was represented by Jonathan Arons. On May 12, 2011, following closing arguments, the court took this matter under submission.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the parties' factual stipulations, and the evidence and testimony introduced at this proceeding. Respondent was admitted to the practice of law in California on December 8, 1992, and has been a member of the State Bar of California since that time.

A. Findings of Fact

At all relevant times herein, respondent maintained a client trust account at WestAmerica Bank (trust account) and a personal account at Redwood Credit Union (personal account). As described below, respondent misappropriated a total of \$33,217.28 in client funds from December 8, 2008 through April 1, 2010.

The James G. Matter

On December 8, 2008, respondent deposited \$8,900.00 in settlement funds into his trust account on behalf of his client, James G. From December 8, 2008 through January 15, 2009, respondent was required to maintain \$4,000.00 in his trust account on behalf of James G. As of December 31, 2008, the balance in respondent's trust account dropped to \$226.45. As of

December 31, 2008, respondent misappropriated \$3,773.55 of James G.'s funds for his own use and benefit. In 2009, however, respondent paid James G. all the funds to which he was entitled—prior to the matter being brought to the State Bar's attention.

James O. Matter

On January 16, 2009, respondent deposited \$19,500.00 in settlement funds into his trust account on behalf of his client, James O. From January 16, 2009 through March 4, 2009, respondent was required to maintain \$11,203.54 in his trust account on behalf of James O. As of January 30, 2009, the balance in respondent's trust account dropped to \$272.26. As of January 30, 2009, respondent misappropriated \$10,931.28 of James O.'s funds for his own use and benefit. Respondent, however, subsequently paid James O. all the funds to which he was entitled—prior to the matter being brought to the State Bar's attention.

Susan R. Matter

On February 11, 2009, respondent deposited \$7,500.00 in settlement funds into his trust account on behalf of his client, Susan R. From February 11, 2009 through April 1, 2010, respondent was required to maintain \$4,500.00 in his trust account on behalf of Susan R. As of October 20, 2009, the balance in respondent's trust account dropped to \$63.44. As of October 20, 2009, respondent misappropriated \$4,436.56 of Susan R.'s funds for his own use and benefit. In April 2010, respondent paid Susan R. all the funds to which she was entitled.

Tilyn B. Matter

On February 27, 2009, respondent deposited \$15,000.00 in settlement funds into his trust account on behalf of his client, Tilyn B. From February 27, 2009 through October 21, 2009, respondent was required to maintain \$5,000.00 in his trust account on behalf of Tilyn B. As of October 20, 2009, the balance in respondent's trust account dropped to \$63.44. As of October 20, 2009, respondent misappropriated \$4,936.56 of Tilyn B.'s funds for his own use and benefit.

Respondent, however, subsequently paid Tilyn B. all the funds to which she was entitled—prior to the matter coming to the State Bar’s attention.

Sheila T. Matter

On April 27, 2009, respondent received and deposited \$5,500.00 in settlement funds into his trust account on behalf of his client, Sheila T. From April 27, 2009 through March 31, 2010, respondent was required to maintain \$3,300.00 in his trust account on behalf of Sheila T. As of April 30, 2009, the balance in respondent’s trust account dropped to \$48.45. As of April 30, 2009, respondent misappropriated \$3,251.55 of Sheila T.’s funds for his own use and benefit.

From April 27, 2009 through on or about March 31, 2010, respondent failed to notify Sheila T. of his receipt of \$5,500.00 in settlement funds. During this time period, Sheila T. contacted respondent by telephone on numerous occasions to ask whether he had received her settlement funds. In response, respondent falsely told Sheila T. that the insurance company was delaying payment of the settlement funds. It was not until on or about March 31, 2010, that respondent issued a trust account check to Sheila T., representing her portion of the settlement funds.

Patricia T. Matter

On July 6, 2009, respondent deposited \$15,000.00 in settlement funds into his trust account on behalf of his client, Patricia T. From July 6, 2009 through September 12, 2009, respondent was required to maintain \$5,000.00 in his trust account on behalf of Patricia T. As of July 31, 2009, the balance in respondent’s trust account dropped to \$48.77. As of about July 31, 2009, respondent misappropriated \$4,951.23 of Patricia T.’s funds for his own use and benefit. In September 2009, respondent paid Patricia T. all the funds to which she was entitled, before the matter came to the attention of the State Bar.

Sheila M. Matter

On September 3, 2009, respondent received and deposited \$3,900.00 in settlement funds into his trust account on behalf of his client, Sheila M. From September 3, 2009 through April 1, 2010, respondent was required to maintain \$1,000.00 in his trust account on behalf of Sheila M. As of September 30, 2009, the balance in respondent's trust account dropped to \$63.45. As of September 30, 2009, respondent misappropriated \$936.55 of Sheila M.'s funds for his own use and benefit.

From September 3, 2009 through on or about April 1, 2010, respondent failed to notify Sheila M. of his receipt of \$3,900.00 in settlement funds. During this time period, Sheila M. contacted respondent by telephone on numerous occasions to ask whether he had received her settlement funds. In response, respondent falsely told Sheila M. that the insurance company was delaying payment of the settlement funds. It was not until on or about April 1, 2010, that respondent issued a personal check to Sheila M., representing her portion of the settlement funds.

Commingling and Insufficient Funds

Respondent repeatedly deposited non-client funds into his trust account, thereby commingling these funds into his trust account, as follows:

<u>Date of Deposit</u>	<u>Amount of Deposit</u>	<u>Payor</u>
11/6/08	\$225.00	Elizabeth P.
12/4/08	\$1,800.00	Respondent
9/3/09	\$1,200.00	Respondent
10/20/09	\$2,100.00	Respondent
11/10/09	\$350.00	Rosalie P.
12/11/09	\$355.00	Respondent

As of October 21, 2009, the balance in respondent's trust account was \$64.33. That same day, respondent issued check no. 2428 from his trust account, to his personal account, in the amount of \$5,000. At the time of issuing check number 2428, respondent knew that there were insufficient funds in his trust account to satisfy charges against the account.

Prior to depositing the \$5,000 check into his personal account, respondent knew that the balance in his personal account was \$394.39. On October 21, 2009, respondent purchased a cashier's check in the amount of \$5,000.00 made payable to Tilyn B. from the funds maintained in respondent's personal account. At the time of purchasing the cashier's check, respondent knew that there were insufficient funds in his personal account to satisfy charges against the account. As of October 21, 2009, respondent misappropriated \$4,605 (\$5,000-394.39) from Redwood Credit Union.

On October 21, 2009, respondent gave the cashier's check to Tilyn B. Tilyn B. cashed the cashier's check. On October 29, 2009, respondent received notice from Redwood Credit Union that check number 2428 was returned for insufficient funds and that respondent's personal account had a negative balance.

B. Conclusions of Law

1. Count One – (Rules Prof. Conduct, rule 4-100(A)¹ [Failure to Maintain Client Funds in Trust Account])

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith. "An attorney violates [rule 4-100] when he or she fails to deposit and manage funds in the manner delineated by the rule, even if this failure does not harm the client. [Citation.]" (*Murray v. State Bar* (1985) 40 Cal.3d 575, 584.) By failing to maintain in his trust account the funds that he was required to maintain on behalf of his clients, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

¹ Unless otherwise indicated, all further references to rules refer to the California Rules of Professional Conduct.

2. Count Two – (Bus. & Prof. Code, § 6106² [Moral Turpitude–Misappropriation])

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption. “There is no doubt that the wilful misappropriation of a client’s funds involves moral turpitude. [Citations.]’ [Citations omitted.]” (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.) By misappropriating \$33,217.28 from the funds held in his trust account on behalf of his clients, respondent committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

3. Count Three – (§ 6106 [Moral Turpitude])

By issuing checks drawn on his trust account and personal account when respondent knew that there were insufficient funds in his accounts to cover these checks, respondent committed acts involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

4. Count Four – (Rule 4-100(A) [Commingling])

Under rule 4-100(A), commingling occurs whenever an attorney uses his or her client trust account for personal purposes, even if no client funds are in the account at the time. (*In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 876.) By depositing non-client funds into his trust account, respondent utilized his trust account for his own personal use, in willful violation of rule 4-100(A).

5. Count Five – (Rule 4-100(B)(1) [Failure to Notify Client of Receipt of Funds])

Rule 4-100(B)(1) requires that an attorney promptly notify a client of the receipt of the client’s funds, securities, or other properties. By failing to promptly notify Sheila T. and Sheila M. that he received their settlement funds, respondent failed to notify his clients promptly of the receipt of their funds, in willful violation of rule 4-100(B)(1).

² All further references to section(s) are to the Business and Professions Code, unless otherwise indicated.

6. Count Six – (Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly])

Rule 4-100(B)(4) requires that an attorney promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the attorney which the client is entitled to receive. By failing to pay Sheila T. her settlement funds until on or about March 31, 2010, after she made repeated inquiries about the status of her settlement funds, and by failing to pay Sheila M. her settlement funds until on or about April 1, 2010, after she made repeated inquiries about the status of her settlement funds, respondent failed to pay promptly, as requested by a client, any client funds in respondent's possession which the client was entitled to receive, in willful violation of rule 4-100(B)(4).

7. Count Seven – (§ 6106 [Moral Turpitude – Misrepresentation])

By knowingly making false statements to Sheila T. and Sheila M. regarding their settlement funds, respondent committed acts of moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

IV. Mitigation and Aggravation

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b) and (e).)³

A. Mitigation

The record establishes four factors in mitigation by clear and convincing evidence. (Std. 1.2(e).)

Emotional Difficulties

Respondent presented extensive testimony from Dr. Barry Pierce. Dr. Pierce graduated from the University of California at Davis with a B.S. in physiology. He went on to obtain a

³ All further references to standards are to this source.

M.A. from Harvard Medical School of Physiology, and a M.D. from the University of California at Davis. He did his residency in psychiatry at San Mateo General Hospital, in San Mateo, California in 1986. Dr. Pierce is a diplomate of both the American Board of Psychiatry and Neurology and the American Academy of Pain Management. He is one of a small number of psychiatrists receiving Board Certification in Administrative Psychiatry by the American Psychiatric Association. Dr. Pierce specializes in treatment of depression and anxiety. Moreover, Dr. Pierce has treated over 2000 patients.

Dr. Pierce has treated respondent from February 2011 until the present. Dr. Pierce diagnosed that respondent was suffering from a dysthymic disorder—low grade depression—at the time of his misconduct. Dr. Pierce’s diagnosis relied, in part, on psychological testing by Jacqueline Singer, Ph.D, as well as his seven sessions with respondent. Dr. Pierce made the following observations regarding respondent’s personal history:

Respondent received an A.A. degree from Santa Rosa Jr. College. He then attended Empire Law College in 1977, and, after a series of moves back and forth from Michigan and California, he finally graduated in 1988. He was admitted to the State Bar in 1992.

Respondent worked as a solo practitioner and was mentored by Bill Douglas, who was also his best friend. Respondent’s caseload consisted primarily of personal injury cases involving motor vehicle collisions. Respondent described his caseload as mostly small contingency cases that big law firms will not handle. Respondent advanced the cost of litigation in all of his contingency cases. In 2008, respondent took a mold case where he lost a substantial amount of money. This case contributed to his depression and financial problems.

By 2008, respondent was very depressed and his 20-year-old marriage was in trouble, so he and his wife began seeing Dr. Daniels. Dr. Daniels had a Ph.D in psychotherapy but was not licensed. In late 2008, respondent’s close friend died of lung cancer. Furthermore, in May 2009, his mentor, Bill Douglas, had a stroke in respondent’s backyard and died on May 21, 2009. By May of 2009, respondent continued with a downward spiral into a depressive state.

Respondent began taking steps to address his depression and unmet dependency needs in 2008. That was when he began seeing Dr. Daniels for couples’ therapy. In 2009, after being

contacted by the State Bar for his misconduct, respondent started addressing his depression with Dr. Daniels. In November of 2010, respondent contacted the Lawyer Assistance Program (LAP) and thereafter, enrolled in the LAP. He was told in the LAP that he had to see a licensed psychiatrist and psychologist, so at that point respondent met with Jacqueline Sanger PH.D, a licensed clinical and forensic psychologist, and began treatment with Dr. Pierce.

Dr. Pierce opined that respondent's depression has contributed to his poor decision making, poor executive functioning, and general apathy about life. It is even a partial explanation as to why it took respondent 10 years to complete law school.

Dr. Pierce also testified that respondent has a characterological disorder that is responsible for the underlying depression. The characterological disorder is related to his unmet dependency needs primarily due to the fact that at the age of 11, respondent became "the man of the house."⁴ These unmet dependency needs have had profound influences on how respondent negotiates through life. Dr. Pierce described respondent as bumping through life without paying much attention to where he put his rudder. In short, respondent had not figured out a way to have these unmet dependency needs met in a healthy way.

Dr. Pierce testified that neither he nor respondent are claiming that depression and his unmet dependency needs are responsible for his misconduct, but that they are a way of explaining or understanding how his misconduct could happen. In fact, Dr. Pierce stated, "You can connect the dots that when a guy is depressed most of his life and he has the characterological problems that respondent has, he is going to stumble, and has year after year

⁴ Respondent's father died when he was eleven years old. At the time of his father's death, respondent was the oldest child in the family of four and his mother was pregnant with her fifth child. As the eldest child, respondent felt a tremendous responsibility to his mother and siblings.

.... his depression contributed to the mistakes he has made in life, including his misuse of client funds.”

Dr. Pierce believes that respondent has a treatable condition. Dr. Pierce testified that the elements that make the potential for good treatment are: (1) a competent therapist; (2) desire, willingness, and motivation on the part of the patient; and (3) a degree of psychologicalness (insight) and capacity to do the work (intellect). Dr. Pierce believes that respondent has met all these elements. He does not believe that respondent’s characterologic issues include antisocial or unnecessary risk-taking or pathological lying. He describes respondent’s lying to clients about when the settlement money came in as more of a defensive reflex much like that of a deer caught in the headlights.

Based on the testimony of Dr. Pierce, the court finds that respondent was suffering from severe emotional difficulties, and that these difficulties were related to his misconduct. (*Read v. State Bar* (1991) 53 Cal.3d 394, 424-425 [Severe emotional problems which can be related to the misconduct at issue can be considered to have a mitigating effect]; std. 1.2(e)(iv).)

Cooperation

Respondent displayed candor and cooperation during this disciplinary proceeding by stipulating to most of the facts alleged in the NDC filed in this matter and by admitting culpability. Respondent is entitled to significant mitigation for entering into the extensive stipulation of facts and admitting culpability. (Std. 1.2(e)(v).)

Good Character

Respondent presented sworn character witnesses who testified credibly as to his good character. (Std. 1.2(e)(vi).) The witnesses laudably praised respondent as fair, ethical, honest, intelligent, and compassionate. All of the witnesses were aware of the fact that respondent misused and misappropriated client funds and was not truthful to his clients about his misuse of

their funds. Despite this knowledge, all of respondent's character witnesses said they would refer other people to him and they would employ him as their attorney. Two of the witnesses testified that they found respondent's misconduct to be totally out of character.

Respondent's character evidence is an extraordinary demonstration of good character by a wide range of references in the general community who are aware of the full extent of the charges against respondent.⁵ (Std. 1.2(e)(vi).)

Remorse

Respondent has shown remorse and willingness to accept responsibility for his acts of misconduct. (Std. 1.2(e)(vii).) He has taken objective steps to overcome his emotional difficulties. In his testimony, respondent owned up to his misdeeds. He testified that he feels terrible about having taken his clients' money to meet his family's financial needs. He has paid back all the money owed to his clients, four of whom were paid before the present matters were brought to the State Bar's attention. Such conduct demonstrates remorse and recognition of his wrongdoing.

B. Aggravation

The record establishes three factors in aggravation by clear and convincing evidence. (Std. 1.2(b).)

Prior Record of Discipline

Respondent has one prior record of discipline. (Std. 1.2(b)(i).) In Supreme Court Case No. S120486 (State Bar Court Case No. 02-O-12269), respondent stipulated, in a single-client matter, to, among other things, a two-year suspension, stayed, with two years' probation, and a five-month period of actual suspension, for accepting a settlement offer without his client's

⁵ Although no lawyers testified as to respondent's good character, the court found that respondent's compelling character evidence from the general community warrants consideration in mitigation.

knowledge or consent, failing to promptly notify his client of the receipt of her settlement funds, and misleading his client regarding the status of her case. In aggravation, respondent committed a trust violation. In mitigation, respondent had no prior record of discipline, he displayed candor and/or cooperation to the State Bar during the disciplinary investigation, he promptly took steps to atone for any consequences of his wrongdoing, and he was involved in pro bono activity.

Multiple Acts

The current misconduct by respondent evidences multiple acts of misconduct. (Std. 1.2(b)(ii).)

Harm

Respondent's misconduct resulted in significant financial harm to his clients. (Std. 1.2(b)(iv).) Said harm includes his failure to promptly disburse funds to Sheila T. and Sheila M.

V. Discussion

Standard 1.3 provides that the primary purposes of discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards 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. (*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.)

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).)

Standards 2.2(a), 2.2(b), and 2.3, among others, apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for willful 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 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.)

The State Bar urges the court to disbar respondent from the legal profession. Respondent, on the other hand, argued that he should receive a period of actual suspension of two to three years. The court looked to *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr 708, and *Doyle v. State Bar* (1982) 32 Cal.3d 12, for instruction.

In *Robins*, the attorney stipulated to misconduct including, but not limited to, six counts of grossly negligent misappropriation of trust funds totaling over \$20,000 in medical liens. In aggravation, the attorney’s misconduct was found to constitute a seven-year pattern, he failed to remedy the misappropriations for up to two years after learning about them, and he significantly harmed one client who was sued by a collection agency. In mitigation, the attorney had no prior record of discipline, he had physical disabilities at the time of some of the misconduct, he was candid and cooperative, he made belated restitution, he performed extensive pro bono services,

he worked to improve his law office management practices, he changed his values through a spiritual reawakening, and he demonstrated sincere remorse for his misconduct.

In *Doyle*, the attorney misappropriated over \$20,000 in client funds. In mitigation, the attorney was suffering from severe financial and family problems at the time of the misconduct. The attorney's payment of full restitution after the complaint was filed with the State Bar, but before proceedings began, was also given favorable consideration. In aggravation, the attorney had a prior record of discipline where he was publicly reprimanded for a \$400 misappropriation; and during his prior disciplinary proceedings, the attorney falsely testified that he would have no further opportunity to mishandle trust funds, as he had relinquished all control of trust account funds to his associate. The Supreme Court ordered, among other things, that the attorney be suspended for five years, stayed, with a two-year period of actual suspension.

Keeping in mind that the Supreme Court's decision in *Doyle* was written well before the implementation of the standards, the court finds *Doyle* to be somewhat similar to the present matter. While the present matter involves more extensive misconduct, it also contains more mitigation and less aggravation. Although both had a prior record of discipline, the attorney in *Doyle* and respondent made restitution to their clients prior to or shortly after the initiation of the disciplinary investigation.

While the court is certainly concerned by the nature of respondent's misconduct and its similarity to his prior discipline, respondent's compelling mitigation—including the emotional difficulties he was suffering from at the time of the misconduct, the restitution he paid before and after the State Bar became involved, and his cooperation and remorse—warrants a level of discipline short of disbarment. Consequently the court recommends, among other things, that respondent be suspended from the practice of law for four years, that execution of that period of suspension be stayed, and that he be placed on probation for five years, including a minimum

period of actual suspension of three years and until respondent provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law.

VI. Recommendations

Accordingly, it is recommended that respondent **Joseph Anthony Parks**, State Bar Number 160473, be suspended from the practice of law in California for four years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of five years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first three years of probation, and he will remain suspended until the following requirement is satisfied:
 - i. Respondent must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent must also comply with the following additional conditions of probation:
 - i. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - ii. Respondent must submit written quarterly reports to the State Bar's Office of Probation (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, the report must be submitted on the next following quarter date, and cover the extended period.

In addition to all the 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 probationary period;
 - iii. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;

- iv. 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 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;
- v. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with his 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;
- vi. Within one year after the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar 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 the session. 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) requirements, and respondent will not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar.);
- vii. Within one year after the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of completion of the State Bar's Client Trust Accounting School. The program is offered periodically at either 180 Howard Street, San Francisco, California 94105-1639 or at 1149 South Hill Street, Los Angeles, California 90015. Arrangements to attend the program must be made in advance by calling (213) 765-1287 and paying the required fee. This requirement is separate and apart from any MCLE requirements; and respondent will not receive MCLE credit for attending the State Bar's Client Trust Accounting School (Rule 3201, Rules of Procedure of the State Bar.);
- viii. Respondent must obtain psychiatric help/treatment from a duly licensed psychiatrist or psychologist at respondent's own expense a minimum of one time per week and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than 30 days after the effective date of the discipline in this matter. Treatment must continue for the period of respondent's probation, or until a motion to modify this condition is granted and that ruling becomes final.

- ix. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.
3. At the expiration of the period of this 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 four years will be satisfied and that suspension will be terminated.

A. Multistate Professional Responsibility Examination

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners and provide proof of passage to the Office of Probation during the period of his actual suspension. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

B. California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.⁶

C. 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

⁶ Respondent is required to file a rule 9.20 affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1998) 44 Cal.3d 337, 341.)

Professions Code section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5.

Dated: July _____, 2011

PAT McELROY
Judge of the State Bar Court