

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of) Case Nos.: **11-O-15543-PEM**
) (11-O-15674; 11-O-17190)
STEVEN CHARLES LYNES,)
) **DECISION**
Member No. 174020,)
)
A Member of the State Bar)

Introduction¹

In this disciplinary proceeding, respondent Steven Charles Lynes is charged with twelve counts of misconduct in three client matters. The charged acts of misconduct include: (1) failing to refund unearned fees; (2) failing to render an accounting of client funds; (3) failing to release client files; (4) failing to communicate with clients; (5) failing to perform with competence; and (6) failing to cooperate in a disciplinary investigation.

The court finds, by clear and convincing evidence, that respondent is culpable of seven counts in three client matters. Based on the present misconduct and the factors in mitigation and aggravation, the court recommends, among other things, that respondent be actually suspended for a period of 90 days.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant 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 28, 2011. On March 5, 2012, respondent filed a response to the NDC.

A three-day trial began on April 17, 2012. The State Bar was represented by Deputy Trial Counsel Bruce Robinson and Christine Souhrada. Respondent was represented by attorney Scott Drexel. On May 11, 2012, following closing arguments, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 7, 1994, and has been a member of the State Bar of California at all times since that date.

Case No. 11-O-17190 – The Bernadou Matter

Facts

Renee Bernadou (Bernadou) had a custom log cabin home built for 1.4 million dollars. Shortly after the home was built she encountered a severe water intrusion problem due to faulty construction.

On May 21, 2010, Bernadou employed respondent to represent her in a construction defect matter and paid respondent an initial deposit of \$2,500. As part of respondent's written fee agreement with Bernadou, respondent agreed to deposit the initial deposit into a trust account. Respondent's hourly charges would be charged against the trust account. Bernadou authorized respondent to use that fund to pay fees and other charges as they were incurred. Payments from the fund would be made upon remittance to Bernadou of a billing statement.

Respondent, however, did not put the \$2,500 in a trust account. Instead, he put the \$2,500 into his general operating account. Respondent explained that he thought his contract with Bernadou contained an advance fee clause rather than an initial deposit.²

Bernadou did not want to file a lawsuit; rather, she wanted to force the original contractor to fix the leaking windows. She hired respondent to do everything he could do to help her get her house repaired without filing a lawsuit. On May 24, 2010, respondent sent Bernadou an email reporting that he had received her signed fee agreement and all her documents.

Bernadou acknowledged that respondent was responsive in the beginning and that he may have helped with a subrogation claim her insurer – State Farm – had with another insurance company. She recalls she may have received some monetary benefits as a result of respondent’s communication with State Farm.

Bernadou’s chief complaint with respect to respondent was that between November 2010 and March 2011, she sent him several emails requesting that he provide her with a status update on her matter. Although respondent received these email messages, he failed to respond to many of these emails and failed to provide her with a status update.

In March 2011, respondent traveled to Bernadou’s home with two experts to inspect the cause of the water damage. It took respondent three to four hours to get to Bernadou’s home, and driving to her home was a chargeable expense. The subsequent inspection of Bernadou’s home took at least two hours. After the inspection, respondent came to the conclusion that the best way to move forward was to file a lawsuit.

On April 16, 2011, Bernadou sent respondent an email terminating his services and requesting a full refund of the \$2,500 she paid in advanced fees. Bernadou terminated

² Respondent had an advanced fee in the Bradley matter and he mistakenly thought that his Bernadou contract had the same clause.

respondent because he was non-responsive to many of her emails, he never issued a bill for services, and he did not write a letter to the contractors as he had promised.

In April 2011, Bernadou employed attorney Evan Williams, who retained an engineer and filed a lawsuit on her behalf. On April 18, 2011, respondent assured Bernadou that he would provide her with a final accounting and her complete file. Thereafter, respondent failed to provide Bernadou with an accounting and did not refund any fees to her.

Conclusions

Count One – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The record does not establish by clear and convincing evidence that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence. The record establishes that respondent did pursue Bernadou's construction defect – albeit not to her satisfaction – and that he did consult with experts. Accordingly, Count One is dismissed with prejudice.

Count Two – Rule 4-100(B)(3) [Failure to Account]

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. By failing to provide Bernadou with an accounting or billing statement, respondent failed to render an appropriate accounting to a client regarding all funds coming into his possession, in willful violation of rule 4-100(B)(3).

Count Three – Rule 3-700(D)(2) [Failure to Return Unearned Fees]

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. The evidence does not show by clear and convincing evidence that Bernadou was entitled to a refund of fees. All parties

agree respondent was hired to get Bernadou's home repaired without having to file a lawsuit. Respondent did bring two experts to inspect her home to determine the cause of the water intrusion. Bernadou agrees that respondent spent at least five hours on the inspection of her home. Moreover, she admits that he may have helped her with additional subrogation claims with respect to State Farm. Therefore, based on the lack of clear and convincing evidence that Bernadou was owed a refund in this matter, the court does not find respondent culpable of Count Three, and it is dismissed with prejudice.³

Count Four – § 6068, subd. (m) [Failure to Communicate]

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. By failing to respond to Bernadou's status update requests between November 2010 and March 2011, respondent failed to promptly respond to reasonable status inquiries, in willful violation of section 6068, subdivision (m).

Case No. 11-O-15543 – The Lumber Mutual Matters

Facts

In December 2006, respondent and Lumber Mutual Insurance Company (Lumber Mutual) entered into a flat fee agreement which provided that respondent would represent Lumber Mutual's named insured, who were defendants in pending litigation. Lumber Mutual agreed to pay respondent a flat fee of \$7,000 for each case respondent handled on behalf of its named insured. The fee agreement required Lumber Mutual to pay respondent an initial

³ The court's decision is based on the evidence before it, and does not preclude Bernadou from seeking a more complete fee analysis through fee arbitration at her local bar association.

payment of \$4,800 at the time of the initial assignment, with the balance of fees due at the time the file was closed.

Pursuant to the flat-fee agreement, respondent agreed to perform “all attorney and support staff activities (excluding costs) prior to the opening of ‘formal discovery’ ...”⁴ Respondent was to prepare an initial evaluation letter and monthly status letters to Lumber Mutual and other participating carriers. Respondent was also to provide quarterly billing statements to Lumber Mutual and participating co-carriers, reflecting attorney/paralegal time, costs, and reimbursement requests.⁵

The Richardson Matter

On February 4, 2009, Lumber Mutual employed respondent to defend Dolan Building Materials (Dolan) in the matter *Richardson v. JMC Homes*, Sacramento County Superior Court, case number 07AS00711, and paid respondent the initial fee of \$4,800. The lawsuit involved 69 homes.

On February 11, 2009, respondent sent an email acknowledging receipt of the assignment to defend Dolan. On May 8, 2009, Lumber Mutual emailed respondent a request for a status report. On May 26, 2009, respondent provided a status report.

For the next seven months, respondent did not provide Lumber Mutual with any status reports on the Richardson matter. On December 9, 2009, Lumber Mutual sent an email requesting an immediate status report. Respondent sent a status report on December 28, 2009, and two supplemental reports in January 2010.

⁴ The flat-fee agreement, defined “formal discovery” as “the commencement of percipient or expert depositions.”

⁵ The initial status reports were due within 30 days, and monthly status reports were to follow. Sometimes the due dates of the monthly status reports were relaxed to every 60 days.

Respondent reported next on March 3, 2010, and then again on March 24, 2010. The next time Lumber Mutual heard from respondent was July 16, 2010, pursuant to a June 18, 2010 request. Then in October 2010, respondent sent another status report to Lumber Mutual.

In early May 2011, respondent reached a settlement agreement on behalf of Dolan in the Richardson matter. Lumber Mutual first learned of the settlement from another defense counsel who they were also paying to represent other defendants in the case.

The Olson Matter

On September 24, 2009, Lumber Mutual employed respondent to represent its named insured in the matter *Olson v. Ranchwood Homes*, Merced County Superior Court, case number CU151582, and paid respondent the initial fee of \$4,800. This construction defect lawsuit involved 27 single-family residences.

Respondent did not provide his first report until December 2009. He then sent another report in January 2010, and then ceased reporting to Lumber Mutual until June 2010. Following requests for additional information respondent sent a supplemental report in July 2010. After July 2010, Lumber Mutual heard nothing further from respondent regarding the Olson case until October 2010.

It is clear from the October updates that respondent had completed at least two mediations in the case resulting in the settlement of 90% of the subcontractors/suppliers. Thereafter, respondent did not respond to any request by Lumber Mutual for updates on the Olson case until June 2011. Moreover, Lumber Mutual never received an invoice from respondent on the Olson case.

On June 3, 2011, Lumber Mutual terminated respondent and employed the law firm Jacobsen & McElroy to represent its named insured in the Olson matter. Lumber Mutual requested that respondent provide it with the Olson file. Although respondent received the

request, respondent failed to respond to it and failed to provide Lumber Mutual with a copy of the Olson file.

The Cabrera Matter

On August 25, 2009, Lumber Mutual employed respondent to represent its named insured in the matter *Cabrera v. Anderson Homes*, Merced County Superior Court, case number CU151259, and paid respondent the initial fee of \$4,800. This construction defect lawsuit involved 85 single-family residences where the insured served as a subcontractor responsible for the supply and installation of interior and exterior doors to the builder. Other insurance carriers also employed respondent to represent other defendants, and they paid \$6,000 pursuant to a fee sharing arrangement between the other insurance carriers and Lumber Mutual.

Although respondent received the Cabrera file in August 2009, he did not provide his initial report to Lumber Mutual until December 2009. Between June 2010 and May 2011, Lumber Mutual made numerous requests for status updates from respondent for the Cabrera case. Respondent's responses to these requests were generally late, and often provided no status update.

Finally, on June 2, 2011, Lumber Mutual notified respondent that they had retained new counsel in the Cabrera lawsuit. Lumber Mutual requested that respondent immediately provide the new counsel – Jacobsen & McElroy – with the original Cabrera file. Although respondent received this request, respondent failed to respond to it.

In August 2011, personnel from Jacobsen & McElroy made numerous requests for the Cabrera file and visited respondent's office twice in an attempt to obtain the Cabrera file. Respondent received notice of these requests for the file.

In August 2011, respondent provided Jacobsen & McElroy with an incomplete file, in that the CD he provided was corrupted. Thereafter, personnel from Jacobsen & McElroy made

additional requests for a complete copy of the Cabrera file. Although respondent received the requests, respondent failed to respond to the requests and failed to provide Jacobsen & McElroy with the complete file in the Cabrera matter until September 2011.

Conclusions

Count Five – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

The court did not receive clear and convincing evidence that respondent failed to competently perform services legal services in the Olson, Cabrera and Richardson matters. Respondent's failure to provide status updates and to promptly release files does not demonstrate a failure to perform legal services with competence. Consequently, Count Five is dismissed with prejudice.

Count Six – Rule 3-700(D)(1) [Failure to Return Client Papers/Property]

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports, and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

By failing to provide Lumber Mutual with a copy of the client file in the Olson matter and not promptly providing Jacobsen & McElroy with the complete client file in the Cabrera matter, respondent, upon termination of employment, failed to promptly release all client papers and property upon the request of the client, in willful violation of rule 3-700(D)(1).

Count Seven – § 6068, subd. (m) [Failure to Communicate]

Between May 2009 and May 2011, Lumber Mutual requested status updates from respondent on dozens of occasions for the Richardson, Cabrera, and Olson matters. Although respondent received the requests, respondent often took months to respond to them, and, in some

instances, failed to respond. By failing to provide Lumber Mutual with requested status updates in the Richardson, Cabrera, and Olson matters, respondent failed to promptly respond to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count Eight – Rule 3-700(D)(2) [Failure to Return Unearned Fees]

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. The State Bar did not establish, by clear and convincing evidence, that respondent did not earn any of the advanced fees he received from Lumber Mutual. In fact, the senior litigator from Lumber Mutual testified that respondent did perform some services and they have never requested a refund. Accordingly, the court does not find respondent culpable on Count Eight, and it is dismissed with prejudice.

Count Nine – § 6068, subd. (m) [Failure to Communicate]

The charging paragraph in Count Nine is identical to that of Count Seven. Having already found respondent culpable in Count Seven, Count Nine is dismissed with prejudice, as duplicative.

Case No. 11-O-15674 – The Bradley Matter

Facts

On December 12, 2010, Steven Bradley (Bradley) employed respondent to write a letter to Bradley's lender to force the lender to foreclose on Bradley's home so that he could obtain a new loan through the VA after declaring bankruptcy.⁶ Bradley paid respondent an advanced fee of \$1,000 for his services.

⁶ Bradley's house sat empty for two years as the bank had scheduled six or seven foreclosures, but never foreclosed on it. The bank's failure to foreclose made it impossible for Bradley to get a new loan.

Respondent wrote a letter to Bradley's lender demanding they foreclose on Bradley's home. In January 2011, after respondent sent the letter to the bank, the bank finally foreclosed on Bradley's home. Bradley was satisfied with the services respondent rendered with respect to the foreclosure.

Bradley testified that after the foreclosure, he called respondent and thanked him for his work. He says that respondent then told him that he had a lot of money left on the retainer agreement. Bradley was unable to give the court any dollar amount as to what was said about the balance that was left on the retainer. Respondent, on the other hand, testified that he never told Bradley that there was a remaining balance.

Both parties testified that there was a discussion regarding spending the rest of the retainer on exploring whether Bradley could qualify for a refinance on an existing loan. Respondent also testified that Bradley wanted him to explore the issue of whether he had had a claim of damages against Bank of America for its failure to foreclose in a timely manner. Respondent stated that he would do the research on the issue and get back to Bradley. However, between January and March 2011, respondent did not contact Bradley.

On March 28, 2011, Bradley telephoned respondent and left him a message terminating his services, requesting an accounting, and requesting a refund. Although respondent received the message, he failed to respond and failed to refund any fees to Bradley.

On April 12 and May 16, 2011, Bradley telephoned respondent and respondent agreed to give Bradley an accounting. Finally, on May 26, 2011, Bradley went to respondent's office and hand-delivered a letter to respondent requesting the refund of unearned fees. Although respondent received the letter, he did not respond to the letter and, to date, has not given Bradley an accounting.

Although respondent has not provided Bradley with an accounting, he asserts that he does not owe Bradley anything. The court finds this testimony disingenuous. There is no credible evidence that respondent performed any work on Bradley's matter after the parties discussed how to spend the remainder of Bradley's retainer. And even if respondent did perform some subsequent research on Bradley's behalf, it would have been worthless since respondent did not communicate his findings to Bradley.

Conclusions

Count Ten – Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund the portion of unearned fees to Bradley, respondent failed to promptly refund any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).⁷

Count Eleven – Rule 4-100(B)(3) [Failure to Account]

In March, April, and May 2011, Bradley requested that respondent provide him with an accounting of the advanced fees paid to respondent. Respondent received the requests, but failed to respond to them and failed to provide an accounting. By failing to provide Bradley with an accounting, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

Case Nos. 11-O-15543; 11-O-15674; and 11-O-17190 – The State Bar Investigation Matters

Facts

On June 14, 2011, the State Bar opened an investigation in the Bernadou matter. On August 30, 2011, a State Bar investigator sent a letter to respondent regarding his conduct in the

⁷ Although the court finds that respondent owed Bradley unearned fees, the court is unable to determine the amount of outstanding fees owed. Consequently, the court cannot make a restitution recommendation. The court's decision in this matter in no way precludes Bradley from seeking fee arbitration through his local bar association.

Bernadou matter, by placing the letter in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1 (official State Bar address). The letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Bernadou matter. Respondent received the letter, but did not provide a written response to the allegations of misconduct in the Bernadou matter.

On May 31, 2011, the State Bar opened an investigation in the Bradley matter. On September 6, 2011, a State Bar investigator wrote to respondent regarding his conduct in the Bradley matter by placing the letter in a sealed envelope correctly addressed to respondent at his official State Bar address. The letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Bradley matter. Respondent received the letter, but did not provide a written response to the allegations of misconduct in the Bradley matter.

On June 13, 2011, the State Bar opened an investigation in the Lumber Mutual matter. On September 7, 2011, a State Bar investigator wrote to respondent regarding his conduct in the Lumber Mutual matter by placing the letter in a sealed envelope correctly addressed to respondent at his official State Bar address. The letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Lumber Mutual matter. Respondent received the letter, but did not provide a written response to the allegations of misconduct in the Lumber Mutual matter.

Conclusions

Count 12 – § 6068, subd. (i) [Failure to Cooperate]

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding

pending against the attorney. By failing to provide a written response to the allegations regarding respondent's conduct in the Bernadou, Bradley, and Lumber Mutual matters, respondent failed to cooperate in disciplinary investigations pending against him, in willful violation of section 6068, subdivision (i).

Aggravation⁸

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

Multiple Acts/Pattern of Misconduct

Respondent was found culpable of seven acts of misconduct in three matters. Multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Mitigation

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

No Prior Record of Discipline

Respondent had practiced law in California for over 14 years prior to the commencement of the instant misconduct. During that span, he had no prior record of discipline. Respondent's 14-year tenure of discipline-free practice is entitled to significant weight in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant weight].)

Discussion

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

⁸ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

disciplinary proceedings and sanctions as “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

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

In this case, the standards provide for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.2(b), 2.4(b), 2.6, and 2.10.) Standard 1.6(a) states, in pertinent part, “If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.”

Standard 2.6 provides that culpability of a member of a violation of section 6068 shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim. Standard 2.4(b) states that, “culpability of a member of willfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.” Standard 2.10 provides that culpability of a member of a violation of rule 3-700 shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim. And standard 2.2(b) states that a violation of rule 4-100 warrants a three-month actual suspension, irrespective of mitigating circumstances.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickie* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law

with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton, supra*, 36 Cal.4th at p. 92.)

The State Bar requested in its pretrial statement that respondent, among other things, be actually suspended for six months. Respondent, on the other hand, argued that his period of actual suspension should not exceed 60 days. The court looked to the case law for guidance and found *Matthew v. State Bar* (1989) 49 Cal.3d 784 and *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, to be instructive.

In *Matthew*, the attorney was found culpable of failing to timely perform legal services in three client matters. In two of these matters, the attorney also failed to return unearned fees. In aggravation, the attorney caused harm to his clients and demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. In mitigation, the attorney had no prior record of discipline, however, this was not considered to be a “weighty mitigating factor,” due to the attorney’s brief legal career. (*Matthew v. State Bar, supra*, 49 Cal.3d at p. 792.) The California Supreme Court ordered that the attorney be suspended for three years, stayed, with three years’ probation, including a sixty-day actual suspension.

In *Greenwood*, the attorney was found culpable of misconduct in two matters. In the first matter, the attorney failed to perform, improperly withdrew from representation, and failed to cooperate with a State Bar investigation. In the second matter, the attorney failed to perform, failed to communicate, violated a court order, failed to return a client’s file, and failed to cooperate in a State Bar investigation. In aggravation, the attorney caused both of his clients’ lawsuits to be dismissed. No mitigating circumstances were found.⁹ The Review Department

⁹ The attorney had no prior record of discipline; however, his six years of practice prior to the beginning of his misconduct did not warrant mitigation.

recommended that the attorney be suspended for eighteen months, that execution of that suspension be stayed, and that he be placed on probation for two years, on the condition that he be actually suspended for ninety days.

The court finds the present matter to be roughly on par with *Matthew* and *Greenwood*. Considering the case law and standard 2.2(b), the court finds a period of actual suspension equivalent to that found in *Greenwood* to be appropriate under the present circumstances. Therefore, the court recommends, among other things, that respondent be actually suspended from the practice of law for 90 days.

Recommendations

Accordingly, it is recommended that respondent **Steven Charles Lynes**, State Bar Number 174020, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of two years¹⁰ subject to the following conditions:

1. Respondent is suspended from the practice of law for the first 90 days of probation;
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.

¹⁰ The probation period will commence on the effective date of the Supreme Court's order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than 20 days before the last day of the probation period and no later than the last day of the 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 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; and
 - vi. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
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 two years will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the discipline herein and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

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.

Dated: August _____, 2012

Pat McElroy
Judge of the State Bar Court