

FILED JANUARY 16, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of ) Case No. **11-O-15647**  
)  
**CHRISTOPHER CHARLES CAYCE,** ) **OPINION**  
)  
A Member of the State Bar, No. 114033. )  
\_\_\_\_\_ )

A hearing judge recommended that respondent Christopher Charles Cayce be suspended for six months and until he made restitution of more than \$17,000 for failing to maintain client funds in a trust account and for commingling. Cayce and the Office of the Chief Trial Counsel of the State Bar (OCTC) both appeal. Cayce requests dismissal on the grounds that he deposited the client funds into his general business account at his client’s instruction as payment for outstanding legal bills. According to Cayce, all client funds placed in his Client Trust Account (CTA) were properly disbursed at his client’s direction, and certain commingling claims are barred by the statute of limitations. OCTC asks for a finding of a violation of Business and Professions Code section 6068, subdivision (a), that the hearing judge dismissed, and an increase of actual suspension to two years.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge’s culpability findings. But we have found overreaching as an additional aggravating factor and assign significant weight to his previous record because his current misconduct occurred shortly after his prior disciplinary probation ended. Based on these

findings in aggravation and relevant case law, we recommend increasing Cayce's actual suspension to nine months.<sup>1</sup>

## I. FACTUAL AND PROCEDURAL BACKGROUND

Cayce was admitted to practice law in June of 1984, and has a prior 2004 discipline. On December 21, 2012, OCTC filed a Notice of Disciplinary Charges (NDC) alleging three counts against Cayce for: (1) failing to maintain funds received on a client's behalf in his CTA (Rules Prof. Conduct, rule 4-100(A)); (2) failing to support the Constitution and laws of the United States and California (Bus. & Prof. Code, § 6068, subd. (a));<sup>2</sup> and (3) commingling personal funds in his CTA (rule 4-100(A)). Before the close of trial, the parties entered into a stipulation as to facts and admission of documents. The hearing judge found Cayce culpable of violating rule 4-100(A), but not the section 6068, subdivision (a), violation. We independently review the record based on evidence that satisfies the clear and convincing standard of proof.<sup>3</sup> We also give great weight to the hearing judge's factual and credibility findings. (Rules Proc. of State Bar, rule 5.155(A) [hearing judge's findings of fact entitled to great weight]; *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315 [great weight assigned to hearing judge's credibility determination].)

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<sup>1</sup> Having independently reviewed all arguments set forth by Cayce, those not specifically addressed have been considered and are rejected as having no merit.

<sup>2</sup> All further references to rules are to the Rules of Professional Conduct and references to sections are to the Business and Professions Code unless otherwise noted.

<sup>3</sup> Clear and convincing evidence must leave no substantial doubt and must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

## II. MONICA CARR MATTER

### A. Factual Background<sup>4</sup>

In March 2006, Monica Carr hired Cayce to represent her in divorce proceedings against Darwin Carr.<sup>5</sup> Darrell D. Moon was the primary attorney on Monica's case, working under Cayce's supervision. Moon performed substantial work, including obtaining a wage garnishment order against Darwin for child support on April 10, 2007. The order required the child support checks to be made payable "In Trust for Monica Carr." Cayce stipulated that his office received 18 child support checks, totaling \$17,215.19, between May 2007 and April 2008, and that he deposited those checks into his general business account, not his CTA.<sup>6</sup> Cayce never distributed any money to Monica from these payments. Instead, he credited them against her unpaid legal bills.

Cayce asserts that Monica assigned her right to the child support payments when she directed Moon to apply the checks to her outstanding legal bills. As evidence of Monica's directive, Cayce points to several emails between them, including one on July 24, 2007, in which Monica requested "[a]s of today . . . that the Law office [sic] of Christopher Cayce forward all collected child and spousal support by cashier's check directly to me . . . ." Cayce contends this is a "retraction" of Monica's prior permission to apply the checks to her legal bills. Cayce also points to correspondence on August 13 and 14, 2007, which he said were written confirmations of conversations with Monica wherein she "reauthorized" and "reconfirmed" his continued application of the child support checks as legal fee payments.

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<sup>4</sup> We summarize the stipulated facts, together with those adduced from the trial evidence.

<sup>5</sup> We use the Carrs' first names to avoid confusion.

<sup>6</sup> Child support checks dated May 17, June 1, June 14, June 28, July 12, October 4, October 18, November 1, November 15, November 29, December 13, and December 27, 2007, named Cayce's law office as payee, but the address as stated on the check was the "Law Office of Christopher Cayce [¶] In Trust for Monica Carr."

Monica denies ever giving permission to Moon, stating she was “surprised that [Cayce] applied it to my bill and I was just kind of in shock.” She testified that she was in dire financial need because she left an abusive husband, was trying to support five children without a job, and was forced to apply for welfare to provide food and other essentials for her children. After she applied for welfare, she specifically asked Cayce and Moon about garnishing Darwin’s wages. “I told [Cayce] that I had applied for welfare and that I was living on welfare, and I wanted them to collect my child support . . . .” She was adamant that she did not make any assignments, stating, “I wasn’t thinking, oh my children should suffer and be on welfare so I can pay my legal fees. No. My kids come before [Cayce], sorry, they come before [Cayce].”

When Monica discovered that the child support was being used to pay down her legal fees, she asked Moon to mail her the checks. He refused. On advice of a paralegal friend, Monica wrote the July 24, 2007 email asking Moon to send her the child support checks and stop applying them to her bill. She re-sent the same email on July 26 and 30. In June 2010, Monica discussed her concerns with Cayce’s and Moon’s representation with an attorney friend, William E. Hoffman. When asked if Monica had assigned the child support payments, Hoffman testified, “I never heard her say that she had. It was my understanding from her that she had not, but it was certainly my understanding from her that whatever had gone on in the past she wanted, in no uncertain terms, to have the child support.”

## **B. Culpability**

### **Count One: Rule 4-100(A) (Failure to Deposit Client Funds in Trust Account)**

Rule 4-100(A) requires that “all funds received or held for the benefit of clients . . . shall be deposited” in a client trust account. Cayce is charged with violating rule 4-100(A) by depositing Monica’s child support payments into his general business account instead of his CTA. The hearing judge found Cayce culpable, and we agree. The funds were clearly intended

for the benefit of Monica and her children, and the wage garnishment order and checks specifically provided that the child support payments were to be held “in trust” for Monica. Cayce not only deposited those checks directly into his business account, but he deposited 13 more into this account *after* Monica sent the July 2007 email unmistakably instructing his office to send the child support funds to her. Cayce’s failure to maintain the funds in trust for Monica in his CTA violates rule 4-100(A). (See *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 758 [if client contests fees, disputed funds must be placed in trust account until conflict is resolved].)

Cayce’s contention that Monica gave him an assignment of the funds is unpersuasive. He offered no supporting documentation for this assertion. In fact, we find clear and convincing evidence that Monica never gave Cayce her permission to use the child support money as payment for her legal bills. Cayce did not inform Monica in writing about the wage garnishment order until August 13, 2007, *after* his office had already received five child support checks. Monica credibly testified that she first discovered the wage garnishment order in July 2007 and that she did not authorize Cayce or Moon to apply the funds to her legal bills. Accordingly, we find no evidence of an assignment.<sup>7</sup> (*In the Matter of Lilly, supra*, 2 Cal. State Bar Ct. Rptr. at p. 191 [failure to provide corroborating evidence of client’s instructions significant in finding violation of CTA rules].)

**Count Two: Section 6068, subdivision (a) (Failure to Comply with Laws)**

Under section 6068, subdivision (a), an attorney has a duty to “support the Constitution and laws of the United States and of this state.” The NDC alleged that Cayce violated this section by using a charging lien to collect child support payments. The hearing judge found no

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<sup>7</sup> Since we do not find clear and convincing evidence that Monica gave permission to Cayce or Moon, we need not reach the issue of whether compliance with rule 3-300 was required or whether there was an assignment or charging lien, as OCTC argues.

violation, and we agree. In addition, the alleged violation of section 6068, subdivision (a), is duplicative since it is premised on the same facts that we considered to find culpability for violating rule 4-100(A). (See *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little purpose served by duplicative charges].) As such, we dismiss Count Two.

### **III. COMMINGLING MATTER**

#### **A. Facts**

Cayce is a licensed real estate broker as well as an attorney. He stipulated that he was a shareholder of real estate companies known as “Del Monte Properties,” “ERA Del Monte Properties,” and “Christopher C. Cayce Realty” (collectively ERA). Sometime in 2007, Cayce ceased having a separate business and trust account for his real estate entities. Instead, from 2007 until 2011, he deposited real estate related funds, including commissions from sales of real property, into his CTA. Cayce maintains he deposited these funds into his CTA to protect them from an ERA officer/shareholder he suspected of making improper expenditures. From his CTA, Cayce paid ERA’s rent, water bills, telephone bills, payroll, car insurance, equipment, and other expenses.<sup>8</sup> He also deposited and disbursed real estate agent commissions, as well as paid their realtor dues. At times, the CTA advanced money to cover ERA’s payroll and then received reimbursement at a later date. In total, Cayce commingled such funds on over 300 occasions.

Cayce also used his CTA to pay his father’s boat loan and the boat’s monthly slip fee to the City of Monterey, his son’s mortgage and other expenses while he was in the military, and his wife’s medical bills and other expenses, while he was separated from her. Meanwhile, the CTA continued to hold money in trust for Cayce’s legal clients as well as their retainer payments.

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<sup>8</sup> Among ERA expenses Cayce paid from the CTA were employees’ salaries, Monterey County Association of Realtor dues for agents, credit cards, rent, phone and utility, water bills, tax bills, accountant fees, keys to offices, computer hosting, books, officer/shareholder J.C. Godfrey’s traffic tickets, and insurance.

## **B. Culpability**

### **Count Three: Rule 4-100(A) (Commingling Personal Funds in CTA)**

Under rule 4-100(A), “[n]o funds belonging to the member or law firm shall be deposited [into a CTA] or otherwise commingled.” The rule “is violated where the attorney commingles funds or fails to deposit or manage the funds in the manner designated by the rule, even if no person is injured. [Citations.]” (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976.)

Cayce operated his real estate business exclusively using his CTA. Although he asserts that he was “asked to hold” money for ERA upon its request, and that ERA and its real estate agents were his clients, “[a] client has no right to request an attorney to commingle the client’s general operating account with the attorney’s client trust account, and the attorney has an independent professional obligation not to allow his or her trust account to be so misused.” (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 425.) Further, the rule against commingling was adopted to protect against the danger that the commingling could result in the loss of clients’ money, such as from mismanagement by an attorney or attachment by creditors. (*Black v. State Bar* (1962) 57 Cal.2d 219, 225-226.) By operating the ERA business from his CTA, Cayce made his clients’ money vulnerable to risks that the commingling rule was designed to prevent. Moreover, the record does not establish that Cayce had an attorney-client relationship with ERA and its agents; there was no attorney-client fee agreement, no payment ledger for attorney services, nor any other indicia of an attorney-client relationship. Therefore, we agree with the hearing judge that Cayce violated rule 4-100(A) when he commingled ERA monies with client funds in his CTA.

Cayce also paid family members’ personal expenses from his CTA, again asserting that they were clients. Aside from Cayce’s own statement, the record shows no evidence of an attorney-client relationship between Cayce and his son, or wife. Further, Cayce improperly paid

State Bar dues from his CTA. We additionally note that “Christopher C. Cayce Realty” is not a legal entity but rather, Cayce working under his own broker’s license.<sup>9</sup> We find that his use of his CTA for payment of these personal and family expenses also constitutes commingling in violation of rule 4-100(A). (See *In the Matter of McKiernan, supra*, 3 Cal. State Bar. Ct. Rptr. 420, 425; *Clark v. State Bar* (1952) 39 Cal.2d 161, 167-168 [commingling committed when attorney and client funds intermingled and client funds’ separate identity is lost so that those funds may be used for attorney’s personal expenses].)

### **C. Procedural Challenge**

The hearing judge denied Cayce’s motion to dismiss the commingling allegations that predate December 21, 2007, because the statute of limitations specified by rule 5.21(A) of the Rules of Procedure of the State Bar was inapplicable. Cayce does not assert that this ruling is in error; rather, he argues the hearing judge should have considered the “laches argument implicit in Respondent’s motion to dismiss.” However, “[t]he defense of laches may not be raised for the first time on appeal.” (*Allen v. Meyers* (1936) 5 Cal.2d 311, 316.) By failing to raise that issue before the hearing judge, Cayce waived this claim. (See *Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 422-423 [points not raised in trial court will not be considered on appeal].)

## **IV. AGGRAVATION AND MITIGATION<sup>10</sup>**

The hearing judge correctly found four factors in aggravation. We include overreaching as an additional factor.

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<sup>9</sup> Cayce stated: “CCC Realty is mine. I have a primary license and I am also the qualifying broker for various companies.”

<sup>10</sup> Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, std. 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Cayce to meet the same burden to prove mitigation. All further references to standards are to the Standards for Attorney Sanctions for Professional Misconduct.



Cayce has a prior record of discipline that resulted in a one-year stayed suspension and a two-year probation with conditions for violating rule 3-300. He failed to fully disclose to a client the terms of an adverse transaction and failed to advise her to seek guidance from another attorney. (Std. 1.5(a); *In re Cayce on Discipline* (Nov. 24, 2004, S127708) Cal. State Bar Ct. No. 01-O-01339.) We find it significant that Cayce committed his misconduct in Monica's case soon after he completed probation, and that the misconduct in the two cases are analogous.

Cayce also committed multiple acts of misconduct by failing to deposit 18 separate child support payments into his CTA and by commingling his business and his CTA funds over 300 times. (Std. 1.5(b); see *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered aggravating as multiple acts].) Further, he significantly harmed Monica and her children by depriving them of much-needed child support payments. (Std. 1.5(f); see *In the Matter of Yagman* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788, 806 [significant harm where client did not receive share of recovery for several months and was deprived of "proper" recovery for six years after attorney took fees to which he was not entitled].) Cayce showed indifference and a lack of insight by failing to recognize the harm he has caused Monica, offer any restitution, or realize that he could not operate his real estate business from his CTA. (Std. 1.5(g).)

We also find that Cayce overreached when he applied the child support payments to pay his legal fees without clear authorization from Monica. (Std. 1.5(d).) "The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party. [Citations.]" (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 243-244.) Given the inequality between Monica and Cayce and his position of trust, we find that this case is aggravated by

Cayce's efforts to pressure Monica into paying his fees with funds earmarked by the superior court as support for her destitute children. Overall, we assign significant aggregate weight to these aggravating factors.

In mitigation, the hearing judge found that Cayce presented sufficient, but not extraordinary, evidence of good character. (Std. 1.6(f).) We agree, and assign it limited weight since he did not offer a sufficiently wide range of references. Cayce's eight witnesses were family members, friends, and current or former employees. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [character evidence entitled to limited weight since it was not from wide range of references].) We also agree with the hearing judge that Cayce is entitled to mitigation credit for his 100 hours per year of pro bono services as well as work for the Rotary Club since 1990. However, we assign minimal mitigation credit since the evidence was primarily based on Cayce's testimony. (*In the Matter of Shalant* (2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited mitigation weight for community service established solely by attorney's testimony].) Finally, we assign minimal mitigation to Cayce's cooperation since he stipulated to limited and easily provable facts. (Std. 1.6(e); *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation accorded to those who admit culpability as well as facts].)

## V. DISCIPLINE

OCTC contends that Cayce should be actually suspended for two years and until he demonstrates rehabilitation. Cayce argues against culpability, but asserts that if misconduct is found, a 30-day or 90-day suspension is appropriate.<sup>11</sup> We find the appropriate discipline is a nine-month actual suspension.

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<sup>11</sup> Respondent's Responsive Brief on Review argued for both a 30-day and 90-day actual suspension.

Our disciplinary analysis begins with the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Standards 1.8(a) and 2.2(a) are applicable. Under standard 1.8(a), if “a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.” Standard 2.2(a) provides that “[a]ctual suspension of three months is appropriate for commingling or failure to promptly pay out entrusted funds.”<sup>12</sup>

We also look to case law for guidance<sup>13</sup> and consider *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615; *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871; *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, and *Aronin v. State Bar* (1990) 52 Cal.3d 276.

The hearing judge relied on *In the Matter of Koehler, supra*, 1 Cal. State Bar Ct. Rptr. 615 and *In the Matter of Doran, supra*, 3 Cal. State Bar Ct. Rptr. 871, where a six-month suspension was imposed in each case. Koehler commingled business and client funds, paid his secretary’s salary and issued personal business checks from his CTA, failed to perform legal services competently, and failed to return advance costs. His misconduct was mitigated by good faith, good character, candor and cooperation with the State Bar, and pro bono and community services but aggravated by a prior private reproof and concealment of funds. In the Doran case, the attorney used his CTA to pay office and personal expenses, engaged in acts of moral turpitude by gross negligence when he issued multiple NSF checks, and failed to act competently

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<sup>12</sup> Because the trial occurred in 2013, the hearing judge properly considered former standard 2.2(b), which called for “at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances,” for commingling of entrusted funds or commission of another violation of rule 4-100. Effective January 1, 2014, standard 2.2(a) and (b) replaced former standard 2.2(b).

<sup>13</sup> See *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 (decisional law as guidance when standards provide range of discipline).

in two client matters. His acts were aggravated by a pattern of misconduct, multiple acts, and taking a position against a client. Cooperation mitigated his misconduct.

We also find applicable *In the Matter of Heiser, supra*, 1 Cal. State Bar Ct. Rptr. 47, who was suspended for six months and *Aronin v. State Bar, supra*, 52 Cal.3d 276, who was suspended for nine months. Heiser had no prior record of discipline but issued checks drawn on insufficient funds to satisfy personal debts, some of which were drawn from his CTA. The court found that Heiser was dishonest, failed to cooperate, and misused his trust account for personal purposes, but found insufficient evidence that he misappropriated client funds. Aronin had no prior record, but he failed to deposit client funds in his trust account; commingled them with personal funds; failed to communicate; did not return unexpended costs to a client; and committed an act of moral turpitude by signing his clients' names to a verified pleading. The court rejected Aronin's claim that he was protecting client funds from a former secretary and his wife, who had previously "invaded" his trust account. The court noted that the standards required at least a three-month suspension for the trust account violations, that no deviation from the standards was warranted, and a nine-month actual suspension was appropriate since Aronin failed to return the unearned fees until the referee's decision was filed. (*Aronin v. State Bar, supra*, 52 Cal.3d at p. 291.)

Like *Koehler, Doran, and Heiser*, Cayce used his CTA for his own personal and business purposes. Similar to *Aronin*, he commingled and attempted to characterize his actions as attempts to protect funds from others. However, unlike these cases, Cayce's misuse of the CTA and commingling was over an extended period and involved more than 300 transactions. Cayce's misconduct is further compounded by his failure to deposit child support payments into his CTA and to offer restitution. Given that he has significant aggravation, including a prior record and indifference, compared with minimal mitigation, his misconduct warrants discipline

more severe than the three-month suspension suggested by standard 2.2(a). Indeed, under standard 1.7(b), if after balancing aggravating and mitigating circumstances, “the net effect demonstrates that a greater sanction is needed,” it is appropriate to impose or recommend a greater sanction than specified by a given standard. Such a greater sanction is appropriate where there is serious harm to the client, the public, and the legal system, and where the record demonstrates that a member is not willing to conform to ethical responsibilities. (*Ibid.*) Cayce’s actions on balance require a greater sanction than recommended by the hearing judge since he caused serious harm to Monica and her children, and he is unwilling to conform to his ethical duties as evidenced by his indifference and overreaching. Guided by the reviewed cases and the standards, we conclude that a nine-month suspension, as the court imposed in *Aronin v. State Bar, supra*, 52 Cal.3d 276, is appropriate. Along with requiring restitution, we believe that this discipline will adequately protect the public and preserve the integrity of the legal profession.<sup>14</sup>

## VI. RECOMMENDATION

For the foregoing reasons, we recommend that Christopher Charles Cayce be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first nine months of his probation, and remain suspended until the following conditions are satisfied:
  - a. He makes restitution to Monica Carr in the amount of \$17,215.19 plus 10 percent interest per annum from April 18, 2008 (or reimburses the Client Security Fund to the extent of any payment from the Fund to Monica Carr, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar Office of Probation in Los Angeles; and,

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<sup>14</sup> We reject Cayce’s argument for a short suspension. Standard 2.2(a) requires at least a three-month suspension for his trust violations and Cayce has not presented a reason to deviate from this standard. We also view OCTC’s recommendation of two years of actual suspension as excessive in light of the range of discipline suggested by the standards, the applicable case law, and because we did not find Cayce culpable of violating section 6068, subdivision (a).

- b. If he remains suspended for two years or more as a result of not satisfying the preceding requirement, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
3. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.
4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all 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 probation period.
6. Cayce must comply with the following reporting requirements:
  - a. If he possesses client funds at any time during the period covered by a required quarterly report, he shall file with each required report a certificate from him certifying that:
    - i. He has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account;" and
    - ii. He has complied with the "Trust Account Record Keeping Standards" as adopted by the Board of Trustees pursuant to rule 4-100(C) of the Rules of Professional Conduct.
  - b. If he does not possess any client funds, property or securities during the entire period covered by a report, he must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, he need not file the certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct.

7. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
8. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if Cayce has complied with all conditions of probation, the stayed suspension will be satisfied and that suspension will be terminated.

#### **VII. PROFESSIONAL RESPONSIBILITY EXAMINATION**

We further recommend that Cayce be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of his actual suspension, which is longer, and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

#### **VIII. RULE 9.20**

We further recommend that Cayce 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.

## **IX. COSTS**

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

HONN, J.

WE CONCUR:

PURCELL, P. J.

EPSTEIN, J.