FILED April 19, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **DALE IRVING GUSTIN,** **Member No. 76642,** A Member of the State Bar.	)	**Case Nos.: 11-O-17015, 12-O-11473-DFM** **DECISION**

INTRODUCTION

Respondent **Dale Irving Gustin** (Respondent) is charged here with two counts of misconduct, involving a single client matter. The counts include allegations that Respondent willfully violated (1) Business and Professions Code section 6103 (failure to obey court order); and (2) section 6068, subdivision (o)(3) (failure to report judicial sanction). The State Bar had the burden of proving the above charges by clear and convincing evidence. The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on September 21, 2012. On November 6, 2012, Respondent filed his response to the NDC.

An initial status conference was held in the matter on October 29, 2012. At that time the case was given a trial date of January 9, 2013, with a four-day trial estimate. Trial was

commenced on January 9, 2013; completed on January 11, 2013; and followed by a short period of post-trial briefing. The State Bar was represented at trial by Deputy Trial Counsel Erin McKeown Joyce. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the NDC and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 21, 1977, and has been a member of the State Bar at all relevant times.

Case No. 11-O-17015 and 12-O-11473 (Anaya Matter)

On May 2, 2008, Sylvia Anaya (Anaya) filed a lawsuit against her employer, the Kern County Superior Court, claiming disability discrimination and harassment, retaliation for taking leave and seeking accommodation, and hostile work environment. The action was originally filed in Kern County, but was subsequently transferred to the Superior Court for San Luis Obispo County in November 2008. Respondent was not Anaya's attorney at the time the lawsuit was originally filed, but subsequently substituted into the action when Anaya's original attorney filed a motion to be relieved as counsel.

After Respondent became counsel of record in the case, he attempted to name Judge John L. Fielder (Fielder) as an additional defendant in the *Anaya* action. Because the normal statute of limitations for the alleged misconduct had already run, Respondent sought to name Fielder as one of the Doe defendants that had been named in the original complaint pursuant to section 474 of the Code of Civil Procedure, in order to obtain the benefit of having the filing relate back to the original filing date.

Section 474 of the Code of Civil Procedure provides in pertinent part: "When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint…and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly[.]" Prior to Respondent seeking to name Fielder as a Doe defendant, Anaya had testified during deposition in a manner making clear that she had been aware of both his name and alleged misconduct well prior to the filing of her complaint. Hence, it was not proper for Fielder to be named as a Doe defendant in the action. Nonetheless, Respondent chose to go forward.

On November 20, 2009, after Fielder received a copy of an "Amended Summons" purporting to name him as a Doe defendant in the action, his attorney wrote a letter to Respondent, pointing out that Respondent's efforts to name Fielder as a Doe defendant were improper. The letter also advised Respondent that his efforts to serve Fielder were deficient. At the conclusion of the letter, Fielder's counsel stated, "Given these defects, we request that you promptly, meaning no later than Tuesday, November 24, withdraw your attempted service on Judge Fielder. Alternatively, we intend to file a motion to quash service and will seek any sanctions to which any defendant to this matter may be entitled, including, but not limited to, those provided for under California Code of Civil Procedure Section 128.7(b)." Respondent received the letter but did not withdraw his effort to name Fielder as a Doe in the action.

On December 7, 2009, Fielder filed a motion to quash service of the summons, setting the hearing of that motion on March 4, 2010. In that motion, Fielder's counsel stated that Respondent's effort to name Fielder as a Doe defendant was improper under section 474 because Anaya "admittedly knew of his identity and the alleged wrongful conduct on his part at the time

she originally filed her Complaint." In support of that contention, portions of Anaya's deposition testimony were attached to the motion.

On January 5, 2010, Fielder filed a motion for an award of $8,230 in monetary sanctions, against both Anaya and Respondent, pursuant to section 128.7 of the Code of Civil Procedure. The motion was based both on the manner in which Fielder had been served and on the fact that the effort to name him as a Doe defendant was factually and legally improper. In this motion, Fielder's counsel stated that the motion to quash had been served more than twenty-one days previously and that "Plaintiff has not withdrawn or corrected the defective pleading." The hearing of this motion was also scheduled for March 4, 2010.

Respondent failed to file any opposition to these motions by the deadline for doing so. As a result, Fielder's counsel then filed a "Reply to Non-Opposition" to the motion for sanctions, pointing to the court that no timely opposition had been filed. In this reply, Fielder's counsel also cited to the court Local Rule 1.06, which states that, if counsel fails to comply with any of the requirements of the local rules, the court "on motion of any party or on its own motion" [emphasis added] may impose penalties.[1] However, no motion was made by Fielder in this reply, requesting that penalties be awarded under that local rule.

After the above Reply to Non-Opposition was filed by Fielder, Respondent and Plaintiff filed on March 2, 2010, an opposition to the motions, challenging the jurisdiction of the court to hear the motions and asking that the hearing of the motions be continued.

Fielder's two motions were both heard on March 4, 2010. Respondent was present. On March 11, 2010, the court issued a lengthy written opinion, granting the motion to quash service

[1] In this reply, Fielder's counsel mistakenly represented to the court that it could award sanctions under this local rule "on the motion of a party or on its own" – omitting the word "motion". This omission potentially created the impression that the court could award sanctions "on its own" without giving prior notice.

of the summons and awarding sanctions against Respondent (but not Anaya) in the amount of $4,115 pursuant to Section 128.7. Those sanctions were ordered to be paid to Fielder's counsel within 60 days of the service of the order. In response to Respondent's late-filed opposition, the court both stated that it would not consider the opposition in deciding the motions and then went on to impose a monetary penalty in the amount of $1,000 under local rules 1.06 and 7.15 and section 177.5 of the Code of Civil Procedure.[2] That $1,000 sanction was ordered to be paid by Respondent to the Clerk of the San Luis Obispo Superior Court within sixty (60) days of the service of the order. Service of this decision and order awarding sanctions was made on March 11, 2010.

Respondent had notice of the above sanction orders but did not report them to the State Bar during the time for him to do so, as set forth in Business and Professions Code section 6068(o)(3). Nor did Respondent pay the sanctions before the 60-day deadline for doing so had expired. He has still not done so.

Instead, on April 7, 2010, Respondent filed a Motion to Reconsider the Ruling to Quash Service and Award Sanctions Against the Plaintiff. In that motion, Respondent also asked that the San Luis Obispo Superior Court judge handling the matter (Hon. Charles Crandall) voluntarily recuse himself from the case and that the case "be transferred to the Federal Courts where it should have been filed in the first instance."

On April 15, 2010, defense counsel wrote a letter to Respondent, advising him that his motion was both untimely and deficient. In this letter, counsel advised Respondent that, if he did

[2] Section 177.5 provides in pertinent part: "A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars ($1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful order by a person, done without good cause or substantial justification. … Sanctions pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or on the court's own motion, after notice and opportunity to be heard."

not withdraw the motion, sanctions would again be sought under Code of Civil Procedure section 128.7.

Thereafter, on April 20, 2010, Respondent filed an amended notice of motion, consisting entirely of a lengthy declaration under penalty of perjury by Respondent. In that declaration Respondent began by stating that "Plaintiff withdraws her request to reconsider the quashing of service of Judge John Lance Fielder but not to vacate the request to strike the award of sanctions against the plaintiff."[3] He then went on to seek to justify his prior decision to name Fielder as a party in the action. At the conclusion of the declaration, he stated, "Although this Court denied the Plaintiff's request to Strike the improperly captioned Motion to Quash for lack of jurisdiction, it is requested that Motion to Strike the sanctions should be addressed as there is no basis for same as there was never any wrongful intent by the Plaintiff by the actions to add him as a Doe defendant, including that the Attorney for Judge Fielder misrepresented the facts to claim that the Statute of Limitations applied to the timing of said alleged service. I declare under penalty of perjury at Paso Robles, California, on April 19, 2010, that the afore facts are true and correct and that this motion is not filed with any intent to delay or otherwise frustrate any pending action, but is filed in good faith on the belief that the Court has acted in a bias and prejudicial manner by awarding the Sanctions and thus the Plaintiff brings this Motion to Strike the award of sanctions and that same will promote a fair judicial determination of this case for all parties." There is no request by Respondent in this motion that any relief be granted based on any claim of financial hardship.

On May 13, 2010, defense counsel again wrote to Respondent, challenging the legal bases for Respondent's still-pending motion, including his request that the case be transferred to

[3] There was no award of sanctions by the court against plaintiff Anaya. Instead, the court made explicitly clear that it was awarding sanctions solely against Respondent.

federal court, and again notifying him that a motion for sanctions would be filed if the motion were not withdrawn. As part of this letter, defense counsel pointed out the inaccuracy of Respondent's allegation that sanctions had been awarded against the plaintiff.

The parties then stipulated to continue the hearing of the motion to August 19, 2010.

On July 29, 201, defense counsel served, but did not file, a motion for sanctions under Code of Civil Procedure section 128.7, in order to comply with the 21-day "safe harbor" provision of that section.

On August 19, 2010, the court denied Respondent's motion for reconsideration.

On the following day, August 20, 2010, defense counsel filed the motion for sanctions under Code of Civil Procedure section 128.7. In its motion, it argued that (1) Respondent's motion was untimely and failed to assert any new facts or law that would allow the Court to reconsider its decision pursuant to section 1008 of the Code of Civil Procedure; (2) that Respondent had presented a declaration that lacked evidentiary support and was sanctionable under section 128.7; and (3) that the Plaintiff's request that the action be transferred to federal court was frivolous and in violation of section 128.7.

Once again, Respondent failed to file an opposition to the motion. Instead, he sought to disqualify Judge Crandall from handling the matter. That effort resulted in the case being stayed so that the disqualification request could be resolved by another judge. On December 15, 2011, the request for disqualification was stricken, and the stay was lifted on December 22, 2011.

The hearing of the sanctions motion was eventually held on May 26, 2011. On that same day, the court issued an order, pursuant only to section 128.7, imposing additional sanctions against Respondent in the amount of $ 4,623, consisting of $3,623, to be paid to defense counsel and $1,000, to be paid to the Clerk of the Court. Those sanctions were ordered to be paid by

Respondent within 60 days of the service of the order. The order was promptly served and subsequently converted by defendant to a judgment on July 18, 2011. Respondent did not pay these sanctions within the 60 days, as he had been ordered to do by the court; he did not seek any relief during that 60-day period from sanction award based on any claim of financial hardship; and he did not seek any appellate review of the sanctions orders.

Count 1 –Section 6103 [Failure to Obey Court Order]

Section 6103 provides, in pertinent part: "A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear … constitute causes for disbarment or suspension." The State Bar contends that Respondent's failures to pay any of the sanctions ordered by the court constitute willful violations of section 6103.

Respondent contends that his failure to pay the sanction awards does not violate section 6103 because (1) the court orders were not valid; and (2) he was financially unable to pay the awards.

This court concludes that the evidence is clear and convincing that the court's order of March 11, 2010, awarding sanctions pursuant to Code of Civil procedure section 128.7, is a valid order. All of the safeguards required by section 128.7 and the requirements of due process were satisfied. Respondent was both properly served with the order and aware of it. Nonetheless, he failed to comply with it and made no effort to seek relief based on any claim of financial hardship.

The court reaches the same conclusions with regard to the court's order of May 26, 2011, awarding sanctions under section 128.7 and Respondent's failure to comply with that order.

These failures by Respondent constitute willful violations by him of his obligations under section 6103 of the Business and Professions Code.

The court makes no finding with regard to whether that portion of the court's order of March 11, 2010, imposing penalties under local rules 1.06 and 7.15 and section 177.5 of the Code of Civil Procedure, was a valid order. No evidence was presented as to whether any advance motion for the potential future award of such sanctions was ever made (either by a party or by the court) or whether any opportunity to be heard was ever provided to Respondent regarding any such potential sanctions, and Respondent denied that such had been done. As quoted above, such procedural steps are required both by the rules and by section 177.5. (See also Rothman, *California Judicial Conduct Handbook,* § 4.41, pp. 192-193.)

Count 2 – Business and Professions Code Section 6068, subd. (o)(3) [Failure to Report Judicial Sanction]

Section 6068(o)(3) of the Business and professions Code requires an attorney to report to the State Bar any imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000). That report must be in writing and must be made within 30 days of the time the attorney has knowledge of the sanctions. The sanctions order must be reported even though it is or will be appealed. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 866-867.) The willful violation of this duty does not require a bad purpose or an evil intent. (*Id*.)

Respondent failed to report the court's sanction orders of both March 11, 2010, and May 26, 2011, despite his knowledge of those orders. Those failures by him constitute willful violations by him of his duties under Section 6068(o)(3).

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)[4] The court finds the following with regard to aggravating factors.

Prior Discipline

Respondent has been disciplined on two prior occasions since being admitted in 1977.

In 1995, he was disciplined by the Supreme Court for violations of rules 3-110(A), 3-700(A)(2), and 4-100(B)(4) of the Rules of Professional Conduct. The discipline imposed was a one year stayed suspension, coupled with two years of probation. (Case Nos. 92-O-11303 and 92-O-19706.)

In July 2003, he was privately reproved by this court for violations of rule 3-110(A) and Business and Professions Code section 6068(m) [failure to respond to client's status inquiries]. (Case No. 02-O-11861.)

Respondent's record of prior discipline is an aggravating circumstance, but the weight of that aggravation is reduced significantly by the remoteness of the first discipline and the lack of severity and the age of the second discipline. (Std. 1.2(b)(i).)

Multiple Acts

Respondent has been found culpable of multiple acts of misconduct in the present proceeding. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

[4] All further references to standard(s) or std. are to this source.

Harm

Standard 1.2(b)(iv) provides as an aggravating circumstance that the member's misconduct harmed significantly a client, the public or the administration of justice. (Std. 1.2(b)(iv).) Respondent was ordered to reimburse both defense counsel and the court for the many thousands of dollars of expense caused by his prior inappropriate and/or frivolous actions. His prolonged and ongoing failure to reimburse any portion of such expenses has required others to continue to bear the economic burden of his actions and constitutes significant harm under standard 1.2(b)(iv).

Lack of Insight and Remorse

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) As demonstrated by his conduct and testimony during this proceeding, he remains defiant and has no insight regarding his unethical behavior. This is here a significant aggravating factor.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) No mitigating factors were shown by the evidence presented to this court.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the 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.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 1.7(b), which provides: "If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

As noted above, the standards are guidelines and are not applied without analysis. Here, the State Bar agrees that Respondent should not be disbarred because of his failures to pay or

report the two sanction orders. Instead, it contends that the case should be governed primarily by standards 1.7(a) and 2.6. Standard 1.7(a) provides, "If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust." Standard 2.6 provides that violation of certain provisions of the Business and Professions Code, including sections 6103 and 6068, must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim, with due regard for the purposes of discipline.

The State Bar requests that Respondent be actually suspended for two years and until he pays in full the prior sanction awards. In support of that recommendation, the State Bar cites to *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.

This court concludes that the State Bar's recommended discipline is neither necessary nor supported by the cited authority. While this court agrees that Respondent shares many of the same non-redeeming qualities that were present in *Katz*, including Respondent's conduct in this proceeding evidencing his complete lack of remorse, the court also concludes the respondent in *Katz* was guilty of acts of misconduct substantially more numerous and severe than those involved here, including acts of moral turpitude. In addition, the harm caused by the misconduct in *Katz* was more substantial than that caused here.

As a result, this court concludes that a stayed suspension of two years, coupled with a three-year probation, including a period of actual suspension of a minimum of six months and

until Respondent pays those sanctions awarded pursuant to section 128.7, is appropriate under standard 2.6, and that such discipline will be sufficient to protect the public, the profession, and the courts.

RECOMMENDED DISCIPLINE

Recommended Suspension/Probation

For all of the above reasons, it is recommended that **Dale Irving Gustin**, Member No. 76642, be suspended from the practice of law for two years; that execution of that suspension be stayed; and that Respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for a minimum of the first six months of probation and until he pays all of the following sanction awards:
   (a) The $4,115 sanction award, issued by the Superior Court of the County of San Luis Obispo on March 11, 2010; and
   (b) The $3,623 and $1,000 sanction awards, issued by the Superior Court of the County of San Luis Obispo on May 26, 2011.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
3. Respondent must maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home

address and telephone number will not be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

4. Within thirty (30) days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation and 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.

5. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Respondent is on probation (reporting dates).[5] However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

    (a) in the first report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

[5] To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

(b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

5. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.

6. Within one year after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)

7. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

8. At the termination of the probation period, if Respondent has complied with all of the terms of his probation, the two-year period of stayed suspension will be satisfied and the suspension will be terminated.

MPRE

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Rule 9.20

The court recommends that Respondent be ordered to comply with rule 9.20 of the California Rules of Court, and 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]

Costs

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and

[6] Respondent is required to file a rule 9.20(c) 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* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: May _____, 2013

DONALD F. MILES
Judge of the State Bar Court