PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **WILLIAM ROBERT COHEN,** **Member No. 203175,** A Member of the State Bar.	Case No.: 13-H-13819-DFM **DECISION**

INTRODUCTION

Respondent **William Robert Cohen** (Respondent) is charged here with failing to comply with the conditions of his public reproval in willful violation of rule 1-110 of the Rules of Professional Conduct.[1] 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 8, 2015. The NDC alleges that Respondent violated the conditions of his reproval by failing to timely file the quarterly report due on October 10, 2012; failing to provide proof of his passage of the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the reproval; and failing to timely comply with the Minimum Continuing Legal Education (MCLE) obligation set forth in the reproval order.

On September 25, 2015, a notice was issued by this court that the matter has been assigned to the undersigned and that the initial status conference would be held on October 19, 2015. A copy of that notice was mailed by the court to Respondent at his official membership address and at another address provided to this court by the State Bar.

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[1] Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

On September 29, 2015, Respondent filed motions to dismiss the NDC and to be allowed to appear telephonically at all future hearings in the proceeding. The latter motion was based on the expense associated with Respondent having to travel across the country for each hearing, given that Respondent lives and works in Florida.

On October 6, 2015, the State Bar filed an opposition to the motion to dismiss. It also filed a partial opposition to Respondent's motion to be allowed to appear by telephone at all hearings in the proceeding, objecting only to Respondent being allowed to appear at the actual trial of the case by any means other than personal appearance.

On October 8, 2015, this court issued an order denying the motion to dismiss and ordering Respondent to file a response to the NDC within 10 days.

Also on October 8, 2015, this court issued an order granting and denying Respondent's request to be allowed to appear telephonically at all future proceedings in the matter. With regard to Respondent's request to be allowed to appear telephonically at the trial of this matter, that request was denied. (Rules Proc. of State Bar, rules 5.62, 5.81; *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 411 ["no legal basis" to admit telephonic testimony over the objection of the State Bar].) However, the motion was granted with respect to any future status and pretrial conferences. That authorization, however, was conditioned on Respondent providing to this court's case administrators in advance of each and every scheduled conference a telephone number at which he could be reached at the time of that scheduled conference and then being available to take and participate in the call (without disruption) at the time that the scheduled matter was being heard by the court. This order expressly referred to Respondent being obligated to comply with that requirement at the initial status conference, then scheduled for October 19, 2015.

On October 19, 2015, the initial status conference in this matter was held, as previously scheduled. Counsel for the State Bar was present. Respondent was not. Nor was he available by telephone, notwithstanding the express requirements of this court's October 8, 2015 order and its explicit reference to the October 19 initial status conference. At this initial status conference, the case was given a trial date of January 7, 2016, with a one-day trial estimate. Thereafter, on October 19, 2015, this court issued an order revoking the prior grant of authority for Respondent to appear telephonically for all conferences.

Although this court had ordered Respondent on October 8, 2015, to provide a response to the NDC within 10 days after service of its order, Respondent did not do so. As a result, on November 9, 2015, the State Bar filed a motion for entry of Respondent's default. On December 3, 2015, after Respondent had still not filed a response to the motion and the time for him to do so had elapsed, this court issued the following order:

> On September 8, 2015, the State Bar filed the Notice of Disciplinary Charges (NDC) in this matter. The proof of service attached to that NDC indicated that the NDC was sent to both Respondent's official membership address and to an address in Pompano Beach, Florida.
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> On September 29, 2015, Respondent filed a motion to dismiss this proceeding. Although Respondent did not provide his own address in the motion as required by rule 1110 of the Rules of Practice of this court, the proof of service indicates that the pleading was served by an individual employed at Respondent's address in Pompano Beach, Florida.
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> On October 6, 2015, the State Bar filed an opposition to the motion to dismiss. The proof of service indicates that the opposition was sent to both Respondent's official membership address and to Respondent's address in Pompano, Florida. Contained in the opposition were email messages by Respondent to the State Bar after the filing of the NDC, indicating that Respondent's office address is now the Pompano Beach address.
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> On October 8, 2015, this court issued an order denying the motion to dismiss and ordering Respondent to file his response within 10 days after service of that order. The order was sent to both Respondent's official membership address and to his Pompano Beach address.

> No response to the NDC has been filed by Respondent, notwithstanding this court's order. As a result, on November 6, 2015, the State Bar filed a motion for entry of Respondent's default. The motion was sent only to Respondent's official membership address, although the motion includes copies of numerous email messages from Respondent to the State Bar providing the Pompano Beach address as his current address.
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> Although the NDC, this court's order, and the motion to dismiss have all been adequately served, this court hesitates to enter Respondent's default at this time, although the time for him to file an opposition to the motion has elapsed. Instead, the court orders that the State Bar, on or before December 4, 2015: (1) send courtesy copies of its motion for entry of default, including its attachments, to Respondent at his Pompano Beach address by "next day" U.S. mail or equivalent delivery provider (e.g., Federal Express); (2) scan and email to Respondent at his most recent email address a copy of its motion, including its attachments; and (3) file with this court a declaration and any other proof of the State Bar's compliance with this order.
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> In the event Respondent has not filed a response to the NDC or a meritorious opposition to the pending motion by the close of business, December 24, 2015, this court will issue an order ruling on the request that Respondent's default be entered and that he be enrolled inactive as a member of the California bar.
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> This court's staff is directed to serve this order (1) by mail to Respondent's official membership address and to his Pompano Beach address; and (2) by email to his last known email address, as shown in the attachments to the State Bar's motion for entry of Respondent's default, with a copy of that email being sent simultaneously to the State Bar.

On December 23, 2015, one day prior to the above deadline, Respondent signed and served his response to the NDC. In his response, Respondent stated that the allegations of the sole count against him were "Admitted as technically true, however there are substantial reasons which provide a reasonable explanation excusing strict compliance as to each which would therefore not merit any discipliner [sic] being imposed."

On January 4, 2016, the scheduled pretrial conference was held in the matter. Respondent was allowed to appear telephonically for the conference and did participate. At that status conference, after it had been recessed in order for the parties to conduct a court-ordered meet-and-confer session, the parties agreed that the trial date should be continued, based on

Respondent's health issues, and that a settlement conference should be ordered. As a result, the trial was continued to February 22, 2016.

Thereafter, on February 4, 2016, the State Bar filed a motion to again continue the trial, this time due to the unavailability of a previously-disclosed witness. The motion indicated that Respondent has no objection to the requested continuance. On February 8, 2016, this court issued an order granting the continuance and scheduling a status conference on February 22, 2016, to schedule a new trial date. All parties and their counsel were ordered to participate, either in person or by telephone.

On February 22, 2016, Respondent failed to appear for the scheduled conference, either in person or by telephone. As a result, a new status conference was ordered for February 29, 2016, with an order filed and served, expressly stating that a new trial date would be scheduled during the next status conference and that Respondent needed to participate.

Respondent did appear telephonically for the February 29, 2016 status conference, at which time a new trial date of April 21, 2016 was scheduled.

Trial was commenced and completed on April 21, 2016. The State Bar was represented at trial by Deputy Trial Counsel Sue Hong. 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, the very brief stipulation of undisputed facts filed by the parties on the morning of trial, this court's judicial notice regarding whether Respondent had filed a particular motion with this court, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 1, 1999, and has been a member of the State Bar of California since that time.

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In addition to being admitted to practice law in California, Respondent is admitted to practice law in Michigan. On June 8, 2009, he entered into a stipulation with the Michigan Attorney Grievance Commission by which he pled no contest to disciplinary charges of failing to communicate with his client, engaging in the unauthorized practice of law, and failing to withdraw from employment. In this stipulation, Respondent agreed to the imposition of a reprimand.

On August 9, 2009, the Michigan Attorney Discipline Board accepted the stipulation and ordered that Respondent be reprimanded effective September 11, 2009.

On July 5, 2011, Respondent signed a Nolo Contendere Plea to a Stipulation Re Facts, Conclusions of Law, and Disposition ("Stipulation") in California State Bar case No.10-J-01248. The Stipulation included a statement of Respondent's alleged misconduct and resulting discipline in Michigan and the parties' agreement that Respondent would be publicly reproved for such misconduct. The Stipulation also provided that Respondent would comply with certain specified conditions of reproval after the reproval became effective. The order was approved and filed by this court on July 12, 2011, and became effective on August 8, 2011.

The Stipulation's agreed conditions of reproval included, without limitation, the following:

> Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproval. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproval during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of the proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next following quarter date, and cover the extended period. [¶] In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days

before the last day of the condition period and no later than the last day of the condition period.

Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproval.

Within one (1) year of the effective date of the discipline, Respondent must submit to the Office of Probation satisfactory evidence of completion of six (6) hours of Minimum Continuing Legal Education ("MCLE") approved courses in legal ethics, attorney client relations, or law office management.

Respondent did not timely submit the quarterly report due on or before October 10, 2012, for the period July 1, 2012, through September 30, 2012. Instead, it was not until after he was contacted by a probation deputy of the Office of Probation regarding the missing report that he eventually submitted the required quarterly report on November 2, 2012. While Respondent testified at trial that he had timely prepared the quarterly report and had believed that his secretary had mailed it to the Office of Probation, that testimony was belied by his comments to the Office of Probation when he was contacted on November 1, 2012, about the missing report. Respondent made no suggestion during that phone call that he had prepared the October report and believed that it had previously been sent to the Office of Probation. Instead, he indicated that he believed that his reproval period was only for one year [thereby extinguishing any obligation to provide any quarterly reports after August 2012]. However, after then being asked by the probation deputy during this conversation to look at the terms of the reproval, Respondent acknowledged that he was obligated to comply with the conditions of reproval for two years. (Ex. 12, p. 4.)

Respondent also did not present proof of passage of the MPRE prior to the expiration of the deadline for doing so. He took the March 2012 examination but failed to receive a passing score of 85 or above. After obtaining an order from this court extending the deadline for

presenting proof of MPRE passage until ten (10) days after the results of the November 2012 MPRE were released, Respondent took the November 2012 examination but again failed to receive a passing score of 85 or above.

On February 27, 2014, after the deadline for presenting proof of passage of the examination had passed, the State Bar indicated to Respondent that it would resolve Respondent's violations of the conditions of his reproval by issuing Respondent a warning letter, rather than filing formal disciplinary charges, if Respondent took and passed the August 2014 MPRE. In the event that Respondent did not successfully take and pass the August 2014 MPRE by obtaining a score of 85 or above, the State Bar would "reopen" the matter and proceed with a disciplinary prosecution in State Bar Case No. 13-H-13819.

Respondent failed to take and pass the August 2014 MPRE. While he sought to enroll to take the test, and paid the fee for doing so, when he arrived at the scheduled examination, he learned that he had been duped by a fraudulent vendor and that the MPRE was not being given that day at that location.

Rather than promptly enrolling in the next scheduled examination, Respondent sought to have the MPRE requirement waived and the file for case No. 10-J-01248 closed. However, when he sent a motion to this court seeking such relief, he failed to comply with the rules governing the filing of such motions because he attached to the motion only a proof of service signed by himself. As a result, the proffered pleading was rejected by the staff of this court pursuant to rule 1112(2) of the Rules of Practice, and a written notice that the motion had not been filed was sent by this court's staff to Respondent on September 19, 2014. (Ex. 1004.)

No motion for waiver of the MPRE condition was ever filed with this court by Respondent after his initial effort to do so was rejected,[2] and no contention is made by Respondent that any such relief was ever granted by this court. Nonetheless, since August 2014, Respondent has made no effort to enroll in or pass the MPRE, a failure continuing despite the pendency of this disciplinary proceeding complaining of that failure.

With regard to Respondent's obligation to submit six hours of MCLE-approved courses in legal ethics, attorney client relations, or law office management, Respondent provided proof to the Office of Probation on October 6, 2011, that he had taken 6.75 hours of MCLE. (Ex. 6, p. 1.) Thereafter, Respondent provided proof on August 8, 2012, the very deadline for providing such proof, of 12.5 hours of MCLE courses that he had completed. Of these 12.5 hours, the Office of Probation concluded in September 2012 that only 4 hours of 12.5 hours fell within the reproval condition's requirement. With regard to the remaining hours, the Office of Probation rejected 3.75 hours because the class was taken on July 29, 2011, after the reproval Stipulation had been signed and filed by this court but prior to its effective date. The Office of Probation then rejected the remaining hours on its conclusion that the classes "are law practice management, not law OFFICE [sic] management and cannot be accepted towards [Respondent's] condition." (Ex. 11, p. 1.) Although Respondent disputed this conclusion when informed of it by the Office of Probation, he completed an additional two hours of MCLE on November 5, 2012, which he submitted to the Office of Probation in January 2013. Those additional hours were then accepted by the Office of Probation as falling with the description of the reproval condition and satisfying, albeit untimely, Respondent's obligation to provide proof of six hours of qualifying MCLE credit.

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[2] This court took judicial notice of this fact after giving notice at trial to the parties of its intent to do so and a reasonable opportunity to respond. (Evid. Code, §§452, 455; *In the Matter of Aguiluz* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 41, 51, fn. 9; *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373, 378, fn. 1),

Count 1 - Rule 1-110, Rules of Professional Conduct [Failure to Comply with Conditions of Reproval]

Rule 1-110 requires an attorney to comply with the conditions attached to a reproval. When a reproval becomes final, the conditions attached to it are presumed valid. (*In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929, 933.)

The evidence is clear and convincing that Respondent failed to timely file the quarterly report due on October 10, 2012. The report due on that date was not filed until November 2, 2012.

The evidence is also clear and convincing that Respondent failed to provide proof of his passage of the Multistate Professional Responsibility Examination (MPRE) prior to the extended deadline for him to do so. While Respondent argued at trial that his scores would have been "passing" scores in Florida and Michigan, where he is also admitted to practice law, that argument lacks merit. The MPRE requirement is a condition of the reproval issued by the State Bar Court of California, not the discipline or licensing authorities in either Michigan or Florida. The standards set by those states for attorneys practicing in those states do not determine or supersede the standards set in this state for attorneys practicing in this state. If Respondent ever had any belief to the contrary, that fact was expressly stated in the very results received by Respondent from the MPRE authorities. (See, e.g., Ex. 19, p. 16 ["Each jurisdiction has the authority to determine its own passing score. You should check with the board of bar examiners in the jurisdiction you requested your scores to be sent to see what minimum scaled MPRE score has been established as a passing score."].)

Respondent's failures to comply with the above two conditions represent willful violations by him of rule 1-100.

The evidence fails to provide clear and convincing evidence that Respondent violated the MCLE condition of his reproval. It is undisputed that Respondent submitted more than six hours

of MCLE to the Office of Probation before the August 8, 2012 deadline passed and that four of these hours complied with the terms of the reproval condition. For this court to conclude that Respondent nonetheless violated the MCLE reproval condition, the State Bar was required to present clear and convincing evidence that none of the other classes taken by Respondent fell within the description of classes required for compliance with the reproval order. This, the State Bar failed to do. While one of the various probation deputies who had handled Respondent's probation file appeared as a witness, this individual made clear that she had not made the decision to reject the proffered classes and that she was not qualified to express an opinion on that decision. The actual individual within the Office of Probation, who had reviewed and rejected the various classes, was not called as a witness during the trial of this matter. Nor did the documentary evidence provided by the State Bar during the trial of this matter provide clear and convincing evidence that none of the rejected classes qualified. While the Office of Probation presumably reviewed some sort of detailed description by the MCLE provider or some other source of the rejected classes to justify deciding that the classes did not qualify under the terms of the reproval condition, no such description was ever provided to this court. The only information from the MCLE providers given to this court were the titles of some of the classes - and it is not even clear that the titles of all of the classes were provided. Without more information, this court is at a loss to conclude that the certain classes "are law practice management, not law OFFICE [sic] management and cannot be accepted towards [Respondent's] condition."[3] Finally, the Office of Probation rejected 3.75 hours of the submitted classes because the class was taken after the reproval order was signed but before the order became effective. This rationale fails to provide a valid basis for concluding that the hours did not satisfy the

[3] During closing argument, counsel for the State Bar was asked what the difference was between "practice management" and "office management." Counsel stated that she did not know. Based on the dearth of evidence at trial, neither does this court.

reproval condition. Respondent testified that he and the State Bar attorney negotiating the stipulation had agreed that he could immediately begin taking classes to satisfy the MCLE condition. A review of the specific language used to memorialize this condition corroborates that testimony – which was otherwise uncontradicted during the trial of the case. While the language, quoted above, requires that the proof of the MCLE classes must be submitted "within one (1) year of the effective date of the discipline," there is no language stating that the classes must actually be taken within that same period of time. Finally, finding that Respondent's diligence in seeking to comply with this condition resulted in a violation of the condition would be contrary to the purpose underlying the condition. That purpose is to require the probationer to become educated about issues related to the prior misconduct, with the hope that such remedial education will protect the public in the future. The sooner that remedial education is received, the earlier the risk of harm to the public is reduced. That Respondent was energetic in seeking to fulfill this condition sooner, rather than later, should be a source of comfort to the State Bar, not a basis for seeking to impose further discipline.

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. 1.5.) The court finds the following with respect to alleged aggravating factors.

Prior Discipline

As noted above, Respondent has been formally disciplined on one prior occasion. Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.5(a).)

Multiple Acts of Misconduct

Respondent has been found culpable of two separate instances of failing to comply with the conditions of his reproval. These two failures represent multiple acts of misconduct and are

an aggravating factor. (Std. 1.5(b); see *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76 [violating three separate conditions of probation constituted multiple acts of wrongdoing].)

Indifference

As noted above, Respondent has still not passed the MPRE and has not even sought to take it since August 2014. Respondent's ongoing disregard for this requirement of his prior discipline is an aggravating factor. (Std. 1.5(k).)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with respect to alleged mitigating factors.

Cooperation

Respondent entered into a very brief stipulation of facts regarding his failure to timely comply with the conditions of his reproval. For that conduct, Respondent is entitled to some mitigation. (Std. 1.6(e); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443.) The weight of that mitigation, however, is greatly reduced by his repeated and ongoing denials of culpability, the brevity of the stipulation, and the lateness of his cooperation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [credit for stipulating to facts but "very limited" where culpability is denied].)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) 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; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 2.14 calls for "actual suspension" for willful violations of rule 1-110, but it does not provide a timeframe for the length of any actual suspension. Instead, it states that the degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders. Therefore, we look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311).

In the prior published cases dealing with violations of conditions of reproval, discipline ranges from a further reproval to 90 days' actual suspension, depending on mitigation, aggravation, and level of cooperation in the proceedings. (*Conroy v. State Bar* (1990) 51 Cal.3d 799 [60-day actual]; *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103 [90-day actual]; *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr.

813 [reproval]; and *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697 [90-day actual].)

As delineated in the standard, the determination of the appropriate discipline in these matters is governed by the circumstances and attitude surrounding the respondent's breach of the reproval conditions and by the nature of the conditions breached. In this situation, and after measuring the circumstances of Respondent's violations and his attitude against the facts of the prior cases, this court concludes that discipline including a minimum period of 30-days' actual suspension is appropriate.

Further, the court concludes that this period of actual suspension should continue until Respondent presents proof of his passage of the MPRE. The Supreme Court in *Segretti v. State Bar* (1976) 15 Cal.3d 878, 890-891, concluded that, where an attorney's earlier misconduct was sufficiently significant to warrant suspension, the attorney must be required to take and pass the MPRE before being allowed to resume the active practice of law. A decision or order of the State Bar Court recommending suspension of a member must include a requirement that the member take and present proof of passage of the Multistate Professional Responsibility Examination (MPRE). (*Segretti v. State Bar* (1976) 15 Cal.3d 878.) Under the rules, when the previously suspended individual fails to present proof of passage of the MPRE prior to the expiration of the deadline for doing so, the individual is administratively enrolled ineligible to practice until proof of such passage is provided.

The MPRE requirement for all suspension recommendations by this court is not automatically applicable to all orders of reproval. Instead, requiring the MPRE is only appropriate if the court concludes that it would further assist the respondent in recognizing his failings and in preventing future misconduct. (*In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175, 180.) Here, this court found in case No. 10-J-01248 that the

requirement that Respondent pass the MPRE would assist in protecting the public. (Ex. 5, p. 5.) Although it has now been nearly five years since that MPRE requirement was imposed by this court to protect the public, Respondent has still not passed the examination and, worse, he has failed it twice. Under such circumstances, this court concludes that the public's protection requires that Respondent be suspended from practicing law in this state until he provides proof of his passage of the examination.

RECOMMENDED DISCIPLINE

Actual Suspension

For all of the above reasons, it is recommended that **WILLIAM ROBERT COHEN**, Member No. 203175, be suspended from the practice of law for one year; that execution of that suspension be stayed; and that Respondent be placed on probation for two years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for a minimum of the first thirty (30) days of probation and until:
    a. he presents proof to the Office of Probation of his passage of the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners; and
    b. if Respondent remains suspended for two years or longer, he presents proof to the State Bar Court of his rehabilitation, fitness to practice, and present 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. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of this probation.

3. 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.

4. 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.

5. Respondent must submit written quarterly reports to the Office of Probation by no later than January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) of the period of probation. Under penalty of perjury, Respondent must answer the inquiries contained in the Quarterly Report forms provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the State Bar Rules of Professional Conduct during the preceding three calendar months or during the applicable reporting period. In addition to all quarterly reports, a final report, responding to the same inquiries, is due no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period. Each of these reports must be submitted on the form provided by the Office of Probation; be signed and dated after the completion of the

period for which the report is being submitted (except for the final report); be filled out completely and signed under penalty of perjury; and be submitted to the Office of Probation on or before each report's due date.

6. Subject to the assertion of applicable privileges, Respondent 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.

7. 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 he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)[4]

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 Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied.

California Rules of Court, Rule 9.20 – Conditional Requirement

It is further recommended that, if Respondent remains suspended for 90 days or longer, Respondent must be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130

[4] This court is mindful of the fact that Respondent lives and generally practices in another state. However, because of the need for Respondent to be aware of the specific rules governing the practice of law in this state, the requirement that he receive education focused on the rules of this state is of particular importance. While the evidence at trial was insufficient to prove that Respondent had violated the MCLE requirement of his prior discipline, the evidence also fell short of assuring this court that the classes he took during that one-year period had any value in educating him regarding his California obligations or reducing the risk of future misconduct in this state. Required participation in the State Bar's Ethics School will clearly serve that purpose.

days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[5] Failure to do so may result in disbarment or suspension.

Multistate Professional Responsibility Examination

The court does not recommend that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination as a separate requirement, since proof of passage of that examination in the future is already recommended as a requirement for terminating his actual suspension.

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code 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 that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: May 2, 2016

DONALD F. MILES
Judge of the State Bar Court

[5] 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).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 2, 2016, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

WILLIAM R. COHEN
LAW OFFICES OF WILLIAM R. COHEN, PA
1615 S CONGRESS AVE
STE 103
DELRAY BEACH, FL 33445

WILLIAM ROBERT COHEN
1601 NORTH POWERLINE RD
POMPANO BEACH, FL 33069

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

SUE HONG, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 2, 2016.

Rose M. Luthi
Case Administrator
State Bar Court