

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 13-O-12756-DFM
)
STEVEN ALAN FINK,)
) DECISION
Member No. 93762,)
)
A Member of the State Bar.)

INTRODUCTION

Respondent Steven Alan Fink (Respondent) is charged here with six counts of misconduct involving a single client matter. The six counts include allegations of willfully violating (1) Business and Professions Code section 6103 (failure to obey court order)¹; (2) rule 4-100(A) of the Rules of Professional Conduct² (failure to deposit client funds in trust account); (3) section 6106 (moral turpitude - unauthorized endorsement); and (4) rule 4-100(B)(1) (failure to notify client of receipt of client funds). 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 December 12, 2013.

¹ Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

² Unless otherwise noted, all future references to rule(s) will be to the State Bar Rules of Professional Conduct.

On February 5, 2014, the initial status conference was held in the case. At that time, the case was scheduled to commence trial on April 10, 2014, with a two-day trial estimate.

On February 14, 2014, Respondent filed a response to the NDC.

Trial was commenced and completed as scheduled and submitted for decision at that time. The State Bar was represented at trial by Eli Morgenstern and Tyrone Sandoval. Respondent was represented at trial by James Ham of Pansky, Markle & Ham LLP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the NDC, the stipulation of undisputed facts previously filed by the parties, Respondent's stipulation at trial to culpability for counts 4 and 6, 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 16, 1980, and has been a member of the State Bar of California since that time.

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Respondent was initially retained in July 2012 to collect on an arbitration award previously secured by Ephrem Jando (Jando) against Steven Selinsky (Selinsky), Lauren Selinsky, and CA Coastal Estates. Jando is a real estate agent residing and working in Arizona. The arbitration award resulted from a dispute between real estate agents over the fee on a prior transaction. Respondent was paid \$500 to seek to collect the award without the filing of a formal action to confirm the award.

Respondent made numerous efforts to collect the award informally, all of which proved unsuccessful. As a result, it was decided to allow the requisite time to elapse and then file a formal petition to confirm the award.

On December 18, 2012, Respondent received an additional \$2,500 from Jando to begin work on filing the required petition and collecting the award. Thereafter, Respondent drafted and Jando signed an Engagement Letter, dated January 3, 2013, setting out the terms of Respondent's retention.

On January 29, 2013, Respondent filed a Petition to Confirm Contractual Arbitration Award on behalf of Jando in *Jando, et al. v. Steven Selinsky, et al.*, Orange County Superior Court, case No. 30-2013-00627416-CL-PA-CJC (Petition).

On January 30, 2013, Respondent and Jando exchanged e-mails. In Respondent's e-mail, he reported that the Petition had been filed. In addition he stated, "It should be served within the week. I will let you know if there is any response and if a hearing has to be scheduled. If it does, you will NOT have to appear."

On February 21, 2013, Jando and Respondent exchanged e-mails. In Jando's e-mail, he requested another status report, since he had heard nothing since the prior e-mail. In Respondent's reply, he again noted that the Petition had been filed and stated, "I will be sending you a Declaration to sign next week authenticating the documents and proving up your damages, including fees. [¶] We will submit that judgment to the Court and schedule a hearing on the first available date to prove up your judgment."

Respondent did not send a declaration to Jando to execute in the week following the above e-mail. On Saturday, March 9, 2013, Jando sent an e-mail to Respondent asking for a status report. Respondent received the e-mail but did not respond. On March 20, 2013, Jando sent another e-mail to Respondent, complaining about the lack of any response to his prior communication and asking Respondent to call him. Respondent received the e-mail but did not respond.

On April 3, 2013, Jando sent an e-mail to Respondent, titled “Urgent PLEASE READ AND RESPOND.”³ In this e-mail, Jando expressed concern about the lack of any response to his prior communications and again asked for a status report. Respondent received the e-mail but again did not respond.

On May 13, 2013, the State Bar of California received a complaint by Jando against Respondent.

In mid-June 2013, Jando traveled to California. While in the state, he went to Respondent’s office. After being informed that Respondent was at lunch, he then waited in the office’s parking lot until Respondent returned to the office, at which time he confronted Respondent about the lack of responsiveness on his case. Respondent apologized for his conduct, indicating that his time had been consumed by other matters.

On Monday, June 17, 2013, while Jando was returning to Arizona, Respondent forwarded via e-mail to his client a declaration to review and execute to prove up the arbitration award in the pending Petition proceeding. In his e-mail, he thanked Jando for his patience and reminded him that Jando would be entitled to receive interest at the 10 percent legal rate on the award, “which should more than make up for the delays.”

On the following day, June 18, 2013, Jando returned the executed declaration via e-mail. In his e-mail, Jando stated, “Mr. Fink please remember this has NEVER been about money to me. Retaining an attorney almost cost me as much as the judgement [sic]. This has been about principle since day one. The Selinskys have been allowed to feel like they walked all over me for 2 years. I don’t care if my judgment is for 15k or 16k I just want permission to start filing liens and mailing out warnings.”

³ This e-mail was purportedly also faxed to Respondent. However, it was determined at trial that the fax was transmitted by Jando to an incorrect fax number.

On July 10, 2013, Jando made another e-mail request for a status report. On July 11, 2013, Respondent replied, "Hearing to Confirm Arbitration Award is set for August 21 at 9:30 in Dept. C63." In making this report, Respondent was referring to his own calendar, rather than the calendar of the court. The department (C63) to which the Petition was assigned did not allow parties to reserve a date for a hearing without first serving and filing the matter to be heard. Because Respondent had not yet served the defendants with the initial petition, it was not yet possible for him to file a request to confirm the judgment. He intended to complete these steps at the time of this e-mail report, but eventually did not do so. As a result, the August 21 date came and went without the required papers being filed with the court to confirm the award.

On August 7, 2013, Jando notified the State Bar that he and Respondent had communicated about the file, that Respondent was now working on it, and that Jando did not want the State Bar's investigation to continue. Although Jando's complaint with the State Bar had been filed in May, Respondent had not yet been notified of the complaint by either Jando or the State Bar.

Prior to August 21, 2013, Jando continued to monitor the online docket of the Petition maintained by Orange County Superior Court. In doing so, he noted that the court's calendar did not note any hearing on August 21.

On August 26, 2013, Jando e-mailed Respondent to inquire whether Respondent had attended court on August 21. In his response on August 27, 2013, Respondent reported, "We were unable to get them served in time so it went off calendar. I have now allowed 60 days and have set for late October. [¶] Sorry I didn't get back to you sooner but I have a case in San Diego." Jando then asked the State Bar to re-open its investigation.

On September 4, 2013, a State Bar investigator mailed a letter to Respondent requesting a response by September 18, 2013, to the allegations contained in Jando's State Bar complaint. Respondent received the letter but did not provide a response by the specified deadline.

On September 9, 2013, Jando mailed a letter to Respondent, requesting an accounting of all funds paid to Respondent and a refund of all unearned fees within ten business days. The letter included a current address for Jando to which the unearned fees were to be sent. Respondent received the letter but did not provide any response within the requested ten-day period.

On October 10, 2013, the State Bar investigator mailed a second letter to Respondent, again requesting a response to the allegations contained in Jando's complaint. Respondent received the letter but did not provide a response to the letter.

On November 20, 2013, Respondent e-mailed Jando a signed substitution of attorney form.

On November 25, 2013, Respondent presented a cashier's check in the amount of \$2,170, made payable to Jando, to counsel for the State Bar of California. The amount reflected the \$2,500 fees and costs previously advanced by Jando, less the amount of the filing fee for the previously-filed Petition. Counsel for the State Bar of California did not accept the cashier's check.

On January 24, 2014, the cashier's check was mailed by Respondent to Jando. Jando received the cashier's check.

Count 1 – Rule 3-110(A) [Failure to Perform with Competence]

Rule 3-110(A) provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

In the NDC, the State Bar alleges that Respondent violated rule 3-110(A) by failing to serve the Petition to Confirm Arbitration on the opposing parties.⁴ This court agrees. (See *Van Sloten v. State Bar* (1989) 48 Cal.3d 921; *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [attorney failed to perform competently by taking no action towards purpose client retained him to accomplish]; *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 7 [delay of six months in filing bankruptcy petition is reckless failure to perform]; *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 641-642 [delay of over two months in obtaining temporary restraining order to protect client from harassing phone calls was reckless failure to perform].)

At trial, Respondent acknowledged that he never sought to have the defendants served with the Petition in the Orange County Superior Court proceeding between the time of its filing in January 2013 and the termination of his employment in September 2013. The only justification offered by Respondent for his failure to move the case forward was his claim that he was busy with other matters. This explanation fails to justify his inaction in the matter. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647.) This is especially true here, where (1) Respondent indicated that proper performance could have been accomplished in less than two hours; and (2) the court received significant evidence from multiple sources regarding the many hours Respondent was spending during that same time period on various outside community and legal activities.

⁴ At trial, the State Bar asked this court to dismiss the charging allegation that Respondent violated rule 3-110(A) by failing to prepare a declaration in support of his client's damages. Respondent objected to the matter being dismissed and asked, instead, that the contention be resolved on the merits. Thereafter, on Respondent's motion to dismiss under rule 5.110 of the Rules of Procedure of the State Bar, that portion of Count One was dismissed by the court without objection by either party. The court's conclusion, that there is no clear and convincing evidence to support that allegation, is reaffirmed here.

Count 2 – Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

Section 6068, subdivision (m), obligates an attorney to “respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.” From February 21, 2013, until mid-June 2013 (when Jando confronted Respondent at his office), Respondent failed to respond to status inquiries from Jando. He also failed to communicate the significant development that the Petition had not yet been served on the defendants, a fact made especially significant because of the time estimate set forth in Respondent’s prior communications. This failure by Respondent constitutes a willful violation by him of his duties under section 6068, subdivision (m). (*In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 855 [respondent violated § 6068, subd. (m), by failing to respond to letters from clients].)

Count 3 - Section 6106 [Moral Turpitude – Misrepresentation]

Under section 6106, “The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension.” For purposes of State Bar disciplinary proceedings, moral turpitude is “any crime or misconduct reflecting dishonesty, particularly when committed in the course of practice” (*Read v. State Bar* (1991) 53 Cal.3d 394, 412.)

In this count the State Bar alleges that Respondent’s statements in his e-mail of July 11, 2013, were acts of moral turpitude. This court disagrees.

There is no evidence that Respondent intended to mislead Jando at the time of this e-mail. He had calendared the matter in his own busy calendar for a hearing in Department C63 on August 21, 2013, and he intended at that time to take the steps necessary to have the defendants served and to file the papers required to have the matter heard on August 21. While the e-mail

message was ambiguous and potentially misleading, this ambiguity resulted from neither any intentional misconduct by Respondent nor gross negligence on his part.⁵

This count is dismissed with prejudice.

Count 4 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Rule 4-100(B)(3) requires a member to “maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them[.]” This obligation extends to accounting for advanced fees and costs received by the attorney.

Jando requested an accounting in his letter of September 9, 2013. He did not receive one until January 24, 2014.

Respondent stipulated at trial, and this court finds, that Respondent’s failure to provide an accounting to Jando constitutes a willful violation by him of rule 4-100(B)(3).

Count 5 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Rule 3-700(D)(2) provides, in pertinent part: “A member whose employment has terminated shall: ... (2) Promptly refund any part of a fee paid in advance that has not been earned.”

Jando terminated Respondent’s services and made a written request that Respondent refund all unearned fees on September 9, 2013. Respondent made no effort to return any of the unearned fees until November 25, 2013, when he sought to deliver the fees to the State Bar rather than to his former client directly. Then, when that tender was rejected by the State Bar, Respondent did not return the fees to Jando until January 24, 2014, well more than a month after the NDC was filed in this matter.

⁵ At trial, the State Bar agreed that, if the e-mail was ambiguous, it would not reflect an act of moral turpitude. Further, the State Bar investigator handling this matter, who was called as a witness by the State Bar, testified on direct examination that she did not conclude that the letter was misleading.

Respondent seeks to explain a portion of the delay by stating that the State Bar declined to provide him with a current address for his client. That contention is unavailing. Respondent was given a current address by the client in his original refund request. That address remained valid right up to the trial of this matter, and Respondent had no reason to believe in November 2013 that it was no longer valid. Moreover, there is no evidence that Respondent ever sought to communicate with Jando about the correct address at any time after September 2013, even though he was communicating with his former client via e-mail throughout that same period of time regarding the execution of a substitution of attorney form.

Whether measured by the delay from the initial tender to the State Bar or until the final refund in January 2014, Respondent's failure to return promptly the unearned fee is a violation of rule 3-700(D)(2). (See, e.g., *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 923; *In the Matter of Yagman* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788, 805, 807 [when attorney fee dispute arises with former client, attorney should take prompt action to resolve dispute].)

Count 6 – Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

Section 6068, subdivision (i), subject to constitutional and statutory privileges, requires attorneys to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against that attorney.

At trial, Respondent stipulated, and this court finds, that Respondent willfully violated section 6068, subdivision (i), by failing to cooperate and participate in a State Bar disciplinary investigation. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 644 [attorney may be found culpable of violating § 6068, subd. (i), for failing to respond to State Bar investigator's letter, even if attorney later appears and fully participates in formal disciplinary proceeding].)

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct, ⁶ std. 1.5.⁷) The court finds the following with respect to aggravating circumstances.

Multiple Acts of Misconduct

Respondent is culpable of five acts of misconduct. That is an aggravating factor. (Std. 1.5(b).⁸

Mitigating Circumstances

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)⁹ The court finds the following with regard to mitigating factors.

No Prior Discipline

Respondent had practiced law in California for more than 32 years prior to the commencement of the instant misconduct. During that time span, Respondent had no prior record of discipline. That lengthy period of discipline-free practice is entitled to significant weight in mitigation. (Std. 1.6(a);¹⁰ *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 789; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13.)

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⁶ All further references to standard(s) or std. are to this source.

⁷ Previously standard 1.2(b).

⁸ Previously standard 1.2(b)(ii).

⁹ Previously standard 1.2(e).

¹⁰ Previously standard 1.2(e)(i).

No Harm

The court declines to find that Respondent's delay in advancing Jando's action against the defendants resulted in no harm. Respondent had the burden of proof on this issue, and the evidence fails to show that Jando would not have benefitted by having his collection proceeding determined at an earlier date and without the difficulties that resulted from Respondent's inaction.

Cooperation

Respondent entered into an extensive stipulation of facts and freely admitted certain of the violations in this case, for which conduct Respondent is entitled to some mitigation. (Std. 1.6(e);¹¹ see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

Candor/Remorse

Respondent demonstrated genuine candor and remorse to this court regarding the circumstances surrounding his misconduct. Such is a mitigating factor. (Std. 1.6(g).¹²)

Character Evidence

Respondent presented good character testimony from a sitting Superior Court judge and two prominent attorneys. In addition, Respondent introduced into evidence good character declarations from numerous other individuals constituting a wide range of references. Respondent is entitled to mitigation credit for this good character evidence. (Std. 1.6(f);¹³ *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [testimony from

¹¹ Previously standard 1.2(e)(v).

¹² Previously standard 1.2(e)(vii).

¹³ Previously standard 1.2(e)(vi).

members of bench and bar entitled to serious consideration because judges and attorneys have “strong interest in maintaining the honest administration of justice”].)

Community Service

Respondent and his character witnesses presented proof of significant community service and pro bono work by Respondent, which is a mitigating factor entitled to considerable weight. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785; *Rose v. State Bar* (1989) 49 Cal.3d 646, 665; *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 305 [10-15 hours per month of volunteer community and church work counseling people in crisis.]; *In the Matter of Crane and DePew* (Review Dept 1990) 1 Cal. State Bar Ct. Rptr. 139, 158.)

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. (*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 1.7(a) [previously designated 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 2.2(b), which provides, "Suspension or reproof is appropriate for any other violation of Rule 4-100." Other applicable standards include 2.5(c), 2.8(b), and 2.15.

In its post-trial brief, the State Bar asks that Respondent's discipline include 30 days of actual suspension, but that recommendation is based on the assumption that this court will find Respondent culpable of a violation of section 6106.

Conversely, Respondent asks that discipline be limited to imposition of a reproof, but that proposal assumes a finding of less culpability than above.¹⁴

The court concludes that discipline consisting of a one-year stayed suspension and a two-year probation is necessary and appropriate as a result of the Respondent's misconduct. Such discipline would be consistent with the standards, would reflect the multitude of acts of misconduct, and would be consistent with the case law. (See, e.g., *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716; *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1; *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.) Given Respondent's lengthy service as an attorney without any prior discipline; the

¹⁴ In making that recommendation, Respondent's counsel also forgot Respondent's stipulation to culpability for failing to account (Count 4).

evidence regarding his character and community; and the absence of any clear evidence of harm resulting from his action, a period of actual suspension does not appear warranted.

RECOMMENDED DISCIPLINE

Stayed Suspension

For all of the above reasons, it is recommended that **Steven Alan Fink**, Member No. 93762, 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 comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
2. 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.
3. Within 30 days after the effective date of the Supreme Court order in this proceeding, Respondent must contact the State Bar's Office of Probation in Los Angeles and schedule a meeting with the assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. Thereafter, Respondent must

promptly meet with the probation deputy as directed and upon request of the Office of Probation.

4. 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).¹⁵ 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

- (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

¹⁵ 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.

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. During the period of Respondent's actual suspension, 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 one-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 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).)

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 that such payment obligation be enforceable as provided for under section 6140.5.

Dated: August _____, 2014

DONALD F. MILES
Judge of the State Bar Court