

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case Nos.: 13-O-17308-DFM  
)  
ROBERT MICHAEL BALL, )  
) DECISION  
Member No. 138482, )  
)  
A Member of the State Bar. )

INTRODUCTION

Respondent **Robert Michael Ball** (Respondent) is charged here with violating various condition of his probation, in willful violation of Business and Professions Code<sup>1</sup> section 6068, subdivision (k). 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 May 13, 2014. On June 9, 2014, Respondent filed his response to the NDC.

On June 23, 2014, the initial status conference was held in the case. At that time the case was scheduled to commence trial on September 5, 2014. On August 29, 2014, by agreement of the parties, the trial was continued to October 17, 2014.

Trial was commenced and completed on October 17, 2014. The State Bar was represented at trial by Deputy Trial Counsel Shane Morrison and Ross Viselman. Respondent acted as counsel for himself.

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

## **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, and the documentary and testimonial evidence admitted at trial.

### **Jurisdiction**

Respondent was admitted to the practice of law in California on December 7, 1988, and has been a member of the State Bar at all relevant times.

### **Case No. 13-O-17308**

On July 6, 2010, the Hearing Department of the State Bar Court issued an Order Approving Stipulation regarding Facts, Conclusions of Law, and Disposition in State Bar Court case numbers 05-O-04060, 07-O-12895, 08-O-10230, 08-O-10514, 08-O-11389, 09-O-11282; 10-O-02115 (Cons.), wherein the Hearing Department recommended that Respondent be suspended from the practice of law in California for two years, with execution of that period of suspension stayed; and that Respondent was placed on probation for two years with numerous conditions of probation including seven months of actual suspension.

On October 26, 2010, the California Supreme Court filed Order No. S185560, wherein Respondent was suspended from the practice of law in California for two years, with execution of that period of suspension stayed; Respondent was placed on probation for two years with conditions including seven months of actual suspension, effective November 25, 2010; and Respondent was ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on July 6, 2010.

In this proceeding, the State Bar alleges that Respondent failed to comply with several of the conditions of probation recommended by this court and ordered by the Supreme Court.

The pertinent conditions of probation provide as follows:

Final Report

Certification re: Client Funds:

Commencing January 10, 2011, Respondent must submit to the Office of Probation written quarterly reports on each January 10, April 10, July 10, and October 10 of the period of probation, wherein Respondent must state under penalty of perjury whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter, and whether there are any proceedings pending against Respondent in the State Bar Court and, if so, the case number and current status of that proceeding.

If Respondent does not possess any client funds, property, or securities during the entire period covered by any written report that Respondent is required to submit to the Office of Probation, Respondent must so state under penalty of perjury in the written report covering that period which Respondent is required to submit to the Office of Probation.<sup>2</sup>

Respondent must submit to the Office of Probation a written final report, containing the same information as the quarterly reports, by November 25, 2012.

State Bar Ethics School:

Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of State Bar Ethics School and passage of the test given at the end of that session by November 25, 2011.

Restitution Obligations:

Respondent must pay the first of two \$1,250 (plus 10% interest per annum from the effective date of discipline) restitution payments to Lee Trotman ("Trotman") and provide to the Office of Probation satisfactory proof of payment of that restitution payment by December 25, 2010.

Respondent must pay the second of two \$1,250 (plus 10% interest per annum from the effective date of discipline) restitution payments to Trotman and provide to the Office of Probation satisfactory proof of payment of that restitution payment by December 25, 2011.

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<sup>2</sup> At the conclusion of the trial, the State Bar dismissed portions of the NDC alleging that Respondent had failed to comply with certain medical conditions of probation. Affirming this court's prior order in that regard,

Respondent must pay a \$250 (plus 10% interest per annum from the effective date of discipline) restitution payment to Roxanne Patmor ("Patmor") and provide to the Office of Probation satisfactory proof of payment of that restitution payment by December 25, 2010.

Respondent must pay the first of two \$875 (plus 10% interest per annum from the effective date of discipline) restitution payments to Martina Hodges ("Hodges") and provide to the Office of Probation satisfactory proof of payment of that restitution payment by December 25, 2010; q. Respondent must pay the second of two \$875 (plus 10% interest per annum from the effective date of discipline) restitution payments to Hodges and provide to the Office of Probation satisfactory proof of payment of that restitution payment by December 25, 2011.

Respondent must pay a \$250 (plus 10% interest per annum from the effective date of discipline) restitution payment to Johanna Lopez ("Lopez") and provide to the Office of Probation satisfactory proof of payment of that restitution payment by December 25, 2010.

Respondent must pay the first of two \$4,500 (plus 10% interest per annum from the effective date of discipline) restitution payments to Andrew Michaels ("Michaels") and provide to the Office of Probation satisfactory proof of payment of that restitution payment by May 25, 2011.

Respondent must pay the second of two \$4,500 (plus 10% interest per annum from the effective date of discipline) restitution payments to Michaels and provide to the Office of Probation satisfactory proof of payment of that restitution payment by November 25, 2011.

With regard to the State Bar's allegations that Respondent failed to comply with the above conditions of probation, the court finds as follows:

Final Report and Certification of Client Funds:

The final report, including the certification of client funds, was required to be filed by Respondent prior to November 25, 2012. It was not. Instead, he filed the report (including the required certification of client funds), signed by him on November 27, 2012, on November 30,

2012. Hence, the report and included certification of client funds was filed five (5) days late, in violation of the terms of the condition of probation.

State Bar Ethics School:

Respondent attended a session of the Ethics School and passed the test given at the end of that session on October 6, 2011, prior to the deadline for doing so. He understood that the school would promptly notify the Office of Probation of his passage of the school, and he did not do so himself until he submitted his next quarterly report on January 10, 2012. This was a violation of his obligation to present proof of his passage of the Ethics School by November 25, 2011.

Restitution Obligations:

*Trotman:* Respondent was obligated to make two \$1,250 payments, together with accrued interest, to Lee Trotman. The first payment was due within thirty (30) days of the effective date of the Supreme Court's order (e.g., by December 25, 2010). The second payment was due a year later, on December 25, 2011.

On December 23, 2010, Respondent purchased cashier's checks covering his restitution obligation and sent the funds by certified mail that same day to Trotman. In response to a subsequent email inquiry by Respondent, Respondent acknowledged by email on January 5, 2011, that he had received the funds. When the Office of Probation required that Respondent either present proof that the cashier's check had been cashed or obtain a signed statement under oath by Trotman that he had received the funds, Respondent sent a draft declaration to Trotman, which Trotman signed on January 8, 2011, and returned to the Office of Probation. It was received by the Office of Probation on January 12, 2011. In the interim, Respondent provided to the Office of Probation on January 5, 2011, copies of the paperwork evidencing his purchase of the cashier's checks and his mailing of the certified letter to Trotman.

With regard to the second payment, due on December 25, 2011, Respondent purchased a cashier's check and postal money order on December 20, 2011, covering more than his restitution obligation and sent the funds to Trotman. Trotman, in a letter to the State Bar, acknowledged receiving the funds on December 25, 2011. That letter was received by the State Bar on January 3, 2012. While Trotman complained in his letter that he had not received sufficient interest, the Office of Probation concluded that Respondent had actually overpaid the amount of interest owed.

There was no failure by Respondent to make the required restitution payments by the required deadlines.

*Patmor:*

Respondent was obligated to make a \$250 payment, together with accrued interest, to Roxanne Patmor within thirty (30) days of the effective date of the Supreme Court's order (e.g., by December 25, 2010).

On December 23, 2010, Respondent purchased a cashier's check covering his restitution obligation and sent the funds by certified mail that same day to her. On December 28, 2010, Patmor signed an acknowledgement of her receipt of the certified letter. Respondent sent Patmor a declaration to sign and return to the Office of Probation, acknowledging her receipt of the \$250, but Patmor did not return it.

On January 5, 2011, Respondent provided to the Office of Probation copies of the paperwork evidencing his purchase of the cashier's check and his mailing of the certified letter to Patmor. Because the Office of Probation did not regard this as "satisfactory" proof that he had complied with the restitution condition of probation, it subsequently contacted Patmor in July 2011, who confirmed that she had, in fact, received the restitution payment.

There was no failure by Respondent to make the required restitution payments by the required deadline.

*Hodges:*

Respondent was obligated to make two \$875 payments, together with accrued interest, to Martina Hodges. The first payment was due within thirty (30) days of the effective date of the Supreme Court's order (e.g., by December 25, 2010). The second was due on December 25, 2011, a year later.

On December 23, 2010, Respondent purchased cashier's checks covering his restitution obligation and sent the funds by certified mail that same day to Hodges. Hodges signed the "return receipt," acknowledging on December 24, 2010, her receipt of the funds. Respondent had also sent a draft declaration to Hodges, which she signed on January 10, 2011, and then returned to the Office of Probation. It was received by the Office of Probation on January 18, 2011. In the interim, Respondent provided to the Office of Probation on January 5, 2011, copies of the paperwork evidencing his purchase of the cashier's checks and his mailing of the certified letter to Hodges.

With regard to the second payment, due on December 25, 2011, Respondent was advised in April 2012 that Hodges had complained to the Office of Probation that she had not received that second payment. Respondent immediately made the payment, which was well after the deadline for doing so. Respondent, at trial, attributed his late compliance with his mistaken belief that he had previously paid Hodges the second payment. This late payment by Respondent constituted a failure by him to comply with a condition of his probation.

*Lopez:*

Respondent was obligated to make a \$250 payment, together with accrued interest, to Johanna Lopez within thirty (30) days of the effective date of the Supreme Court's order (e.g., by December 25, 2010).

On December 23, 2010, Respondent purchased a cashier's check covering his restitution obligation to Lopez and sent the funds by certified mail that same day to her. Respondent also sent Lopez a declaration to sign and return to the Office of Probation, acknowledging her receipt of the \$250.

On January 5, 2011, Respondent provided to the Office of Probation copies of the paperwork evidencing his purchase of the cashier's check and his mailing of the certified letter to Lopez. On January 6, 2011, Lopez signed the declaration that Respondent had provided to her, acknowledging her prior receipt of the restitution payment, and returned it directly to the Office of Probation. It was received by the office on January 12, 2011.

There was no failure by Respondent to make the required restitution payments by the required deadline.

*Michaels:*

Respondent was obligated to make two \$4,500 payments, together with accrued interest, to Andrew Michaels. The first payment was due on May 25, 2011; the second was due on November 25, 2011.

Respondent sent a cashier's check for the principal amount and interest, purchased on May 9, 2011, to Michaels via certified mail. He also sent Michaels a declaration to sign and return to the Office of Probation, acknowledging his receipt of the restitution payment, but Michaels did not return it.



Respondent provided with his October 10, 2011 quarterly report, received by the Office of Probation on October 5, 2011, his certification that he had made the required restitution payment during the prior quarter and a copy of the cashier's check, dated May 9, 2011, with Michael's endorsement on the back. The bank notations contained on the back of the check indicate that it was cashed by Michaels on June 6, 2011.

Respondent similarly sent his second restitution payment to Michaels. However, because of problems with the issuing bank, Respondent was unable to secure a copy of the endorsed check to send to the Office of Probation and Michaels again did not return any acknowledging declaration to the Office of Probation; nor was he responding to requests for information by the parties. At trial, the parties stipulated that, if called to testify, Michaels would testify that Respondent had timely paid restitution to Michaels in full.

In Respondent's January 10, 2012 quarterly report, received by the Office of Probation on that date, he stated under oath that he had complied with his restitution obligations owed during the prior month.

There was no failure by Respondent to make the required restitution payments by the required deadlines.

*Alleged Failure to Provide Satisfactory Proof of Restitution Payments*

The State Bar does not dispute that Respondent has paid all of the required restitution payments, all but the second payment to Hodges before the court-ordered deadlines. Instead, the gist of the complaint against Respondent is that he failed to provide proof of such payments by those deadlines in a manner satisfactory to the Office of Probation.

Except for the second payment to Hodges, this court declines to find that Respondent's actions failed to constitute a violation of his probation obligations.

Pursuant to the terms of the stipulation approved by this court and adopted by the Supreme Court in its disciplinary order, Respondent was required to have a probation monitor during the course of his probation. An outside attorney was designated to serve that purpose. As part of the compliance letter sent by the Office of Probation to Respondent regarding the role of this monitor, he was informed that his probation monitor had been assigned “to review with you the conditions of probation and establish a manner and schedule of compliance and reporting.” (Ex. 4, p. 3.) Respondent regularly consulted with his probation monitor regarding how to comply with the various conditions of his probation and was being assured by his probation monitor that his efforts, including his reporting to the Office of Probation, constituted compliance with his probation conditions. This testimony was corroborated by the probation monitor, both by her periodic reports to the Office of Probation during the course of Respondent’s probation that he was in continuing complete compliance with the terms of his probation (see Exs. 1024, 1026, 1064, 1069, 1071, 1076, 1078, and 1081) and during her testimony to the same effect during the trial of this matter. Since the Office of Probation had expressly stated that this probation monitor was empowered to “establish a manner and schedule of compliance and reporting,” the evidence fails to provide clear and convincing proof that Respondent’s compliance efforts constituted a willful violation by him of his reporting obligation.

**Count 1 – [Failure to Comply with Conditions of Probation Bus. & Prof. Code, Section 6068(k)]**

Business and Professions Code section 6068, subsection (k), provides that it is the duty of every member to “comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.” As discussed above, Respondent has failed to timely comply with the requirement that he take and present proof of passage of the State Bar’s Ethics School prior to November 25, 2011; that he submit a final quarterly report,

including a certificate regarding client funds, prior to that same date; and that he make and present proof of the second \$875 restitution payment to Martina Hodges, due on December 25, 2011. Respondent's conduct in failing to comply with these conditions of probation constituted willful violations by him of section 6068, subsection (k).

### **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,<sup>3</sup> std. 1.5.)<sup>4</sup> The court finds the following with respect to aggravating circumstances.

#### **Prior Discipline**

Respondent has been disciplined on two prior occasions.

As previously noted, Respondent was disciplined by the Supreme Court, effective November 25, 2010, in case numbers 05-O-04060, 07-O-12895, 08-O-10230, 08-O-10514, 08-O-11389, 09-O-11282, and 10-O-02115. He was suspended for two years, stayed, and placed on probation for two years, with conditions of probation including seven months of actual suspension. The misconduct in those matters included twenty-two violations in eight client matters, including failure to perform legal services with competence (Rules of Professional Conduct,<sup>5</sup> rule 3-110(A)); failure to refund unearned fees (rule 3-700(D)(2)); failure to communicate (section 6068, subd. (m)); failure to provide accountings (rule 4-100(B)(3)); failure to cooperate in a State Bar investigation (section 6068, subd. (i)); and acts of moral turpitude (section 6106). This misconduct occurred between 2000 and 2008.

Respondent's first discipline occurred in 2007, when the Supreme Court issued an order (S149271) in case numbers 03-O-02545, 03-O-04082, 04-O-13606, 05-O-02475, and

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<sup>3</sup> All further references to standard(s) or std. are to this source.

<sup>4</sup> Previously standard 1.2(b).

<sup>5</sup> All future references to "rule(s)" are to this source.

05-O-03032, effective April 5, 2007. In that order, Respondent was suspended for sixty (60) days, stayed, and Placed on probation for one year with conditions not including any period of actual suspension. The misconduct occurred between 2001 and 2003 and also included violations of rule 3-110(A), and section 6068, subdivisions (m) and (i).

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.5(a).)

### **Multiple Acts of Misconduct**

Respondent's repeated failure to comply with several conditions of probation evidences multiple acts of misconduct. (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].)

### **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)<sup>6</sup> The court finds the following with regard to mitigating factors.

#### **Cooperation**

Respondent entered into a brief extensive stipulation of facts for which conduct Respondent is entitled to some mitigation. (Std. 1.(e). However, the stipulated facts were not difficult to prove; therefore we do not consider the weight of this mitigating factor to be more than nominal.

#### **Candor**

Respondent demonstrated candor to the State Bar and this court regarding the circumstances showing his misconduct. Such is a mitigating factor. (Std. 1.2(e)(v).)

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<sup>6</sup> Previously standard 1.2(e).

### **Late Performance of Obligations**

We assign some credit to Respondent for belatedly completing all of the terms of his probation. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 572 [“some” mitigation for sincere “steps to make restitution and comply with probation”]; *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 652 [“belated compliance with a probation condition may be considered as a mitigating factor in determining discipline”].) Notably, Respondent has now paid full restitution as a condition of probation. (See *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 310-311 [restitution is important indicator of attorney rehabilitation].)

### **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.)

In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 1.8(b), which provides that when an attorney has two prior records of discipline, the degree of discipline in the current proceeding is to be disbarment unless the most compelling mitigating circumstances clearly predominate.<sup>7</sup> Notwithstanding its unequivocal language to the contrary, disbarment is not mandated under this standard even if there are no compelling mitigating circumstances that predominate in a case. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781.) That is because the ultimate disposition of the charges varies according to the proof. (*In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 125.)

Ultimately, we are guided by the Supreme Court, which has not applied this standard in a rote fashion. Rather, we “examine the nature and chronology of respondent’s record of discipline. [Citation.] Merely declaring that an attorney has [two prior] impositions of discipline, without more analysis, may not adequately justify disbarment in every case.” (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

Also applicable is standard 1.8(a), which provides that, 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, 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

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<sup>7</sup> Previously standard 1.7(b).

imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Finally, standard 2.10 provides that “Actual suspension is appropriate for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member’s willingness or inability to comply with disciplinary orders.”

In applying these standards to the facts of the case, this court concludes that disbarment here is neither necessary nor appropriate to protect the public, the courts or the profession. Respondent’s misconduct here was not a repetition of prior misconduct; it does not evidence any unwillingness or inability by him to comply with disciplinary orders or the standards of practice; his missteps were generally limited to failing to timely report to the Office of Probation his efforts to comply with the conditions of his probation; his efforts at compliance were being supervised and reviewed by a probation monitor, who was consistently assuring him that his compliance were satisfactory; and there is no evidence of any harm to members of the public. Finally, Respondent has been candid with this court in acknowledging the deficiencies of his actions; and, when problems were brought to his attention in the past, he quickly acted to resolve them.

Although this court declines to recommend Respondent’s disbarment, it does conclude that significant discipline is warranted under the standards and other applicable authorities. Respondent’s probation arises from a prior discipline in which the court ordered a two-year stayed suspension and an actual suspension of seven months. It was also the second time that he had been placed on probation and expected to comply with comparable conditions of probation. Under such circumstances, a failure of the member to be diligent in complying with those court-ordered conditions of probation is especially troubling to this court and warrants increased sanctions.

Accordingly, this court recommends that Respondent be suspended for two years, stayed, and be placed on probation for three years with conditions of probation including one year of actual suspension.

### **RECOMMENDED DISCIPLINE**

#### **Actual Suspension**

For all of the above reasons, it is recommended that **ROBERT MICHAEL BALL**, State Bar No. 138482, 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 the first one year of probation.
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).<sup>8</sup> 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

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<sup>8</sup> 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.

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.

6. 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.
7. 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.)
8. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.
9. 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.

**Multistate Professional Responsibility Examination**

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).)

**California Rules of Court, Rule 9.20**

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, 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.<sup>9</sup>

**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 Business and Professions Code section 6140.5.

Dated: February \_\_\_\_\_, 2015

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DONALD F. MILES  
Judge of the State Bar Court

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<sup>9</sup> 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).)