

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: 11-C-2562-DFM
)
HUGH P. GORTLER,)
) DECISION
Member No. 177417,)
)
A Member of the State Bar.)

INTRODUCTION

This contested conviction referral proceeding arises from the agreement by respondent **Hugh P. Gortler** (Respondent) to enter a guilty plea pursuant to *People v. West*¹ to a misdemeanor violation of Penal Code section 243, subdivision (e)(1) [domestic battery]. (Cal. Rules of Court, rule 9.10(a); Bus. & Prof. Code, §§ 6101, 6102;² Rules Proc. of State Bar, rules 5.340 et seq.) The issues in this proceeding are whether the facts and circumstances surrounding Respondent’s resulting conviction involved moral turpitude (§§ 6101, 6102) or other misconduct warranting discipline (see, e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494); and, if so, what the appropriate level of discipline to be imposed should be.

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) was represented at trial by Acting Senior Trial Counsel Jessica Lienau and Deputy Trial Counsel

¹ 3 Cal.3d 595.
² Except where otherwise indicated, all further statutory references to section(s) are to the Business and Professions Code.

Meredith McKittrick. Respondent was represented by John ‘Jack’ W. Nelson of the law firm of Weisenberg & Nelson.

For the reasons stated below, the court finds that the facts and circumstances surrounding Respondent’s conviction involved misconduct warranting discipline, but not moral turpitude. After evaluating the gravity of the crime, the circumstances of the case, and the aggravating and mitigating factors, the court concludes that the appropriate level of discipline in this proceeding is a public reproof with conditions of reproof described more fully below.

PERTINENT PROCEDURAL HISTORY

On April 19, 2011, Respondent was charged by the Orange County District Attorney with misdemeanor violations of Penal Code sections 243(e)(1) and 273a(b) [child abuse] (two counts) and a felony violation of Penal Code section 422 [criminal threats]. These charges resulted from allegations made by Respondent’s wife after he had told her that he wanted a divorce. On January 30, 2012, Respondent agreed to accept a plea agreement whereby he would agree to enter a guilty plea to a misdemeanor violation of Penal Code section 243(e)(1) [spousal battery] and the remaining charges would be dismissed.

On April 17, 2012, after receiving evidence of finality of Respondent’s conviction, the Review Department referred the conviction to the Hearing Department for further handling. On April 19, 2012, a notice of hearing on conviction and a notice of assignment were issued by this court, and a status conference was ordered for May 29, 2012. On June 25, 2012, Respondent filed his response to the criminal referral. On May 29, 2012, the matter was scheduled to commence trial on August 21, 2012, with a two-day estimate.

Trial was commenced on August 21, 2012 and completed on August 23, 2012. During the trial, Respondent’s wife, called by the State Bar to testify as its principal witness, asked that her husband not be disciplined by this court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on a very brief stipulation of undisputed facts filed by the parties and on the evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on July 3, 1995, and has been a member of the State Bar at all relevant times.

Factual Circumstances Surrounding Criminal Conviction

Respondent and his wife Carol married in May 1996. For virtually all of their marriage Respondent has worked as a self-employed patent attorney, maintaining his office as a sole practitioner in their home. When they moved to their home in Mission Viejo in 1997, he used the converted garage as his office, a location that continued to use up to the incident on April 15, 2011.

Respondent's talents as a patent attorney have been very much in demand. During Carol's testimony at trial, she described her husband's typical work schedule as being 10-14 hours a day/ seven days a week. His hours spent in the office at their home were generally only interrupted by breaks he would take to spend time with the couple's two children. Carol described Respondent as being "a very involved father." In 2011, their son was 10-years-old; their daughter was 12.

Throughout the marriage between Respondent and Carol, a frequent source of stress had been Carol's recurring and disabling Crohn's Disease, which caused her to be frequently hospitalized at Cedars Sinai Hospital in Los Angeles.³ When asked at trial how Respondent responded to the problems created by these hospitalizations, Carol described Respondent as

³ Carol could not quantify the number of these hospitalizations during the marriage, other than to say that they were "more than annually."

“wonderful.” Although their home was in Mission Viejo in Orange County, Carol recounted that Respondent routinely would drive to Los Angeles each day to stay with her in her hospital room because he did not want her to be there alone. He would typically bring his legal work with him and try to do what he could with it in that environment. In the afternoon, he would then drive back to Orange County, where he would pick up the kids at school, take them home, prepare their meals, help them with their homework, continue his legal work, and then call her in her hospital room at the end of the day. The next morning, after getting the kids to school, he would return to the hospital in Los Angeles to start the daily ritual all over again.

An even greater source of stress in the Gortler household was money. Respondent was the primary source of income for the family. As a self-employed attorney, he enjoyed no guaranteed salary. He worried that a loss of an important client could have a devastating effect on the family’s economic welfare. He was also not happy with what he viewed as Carol’s indifference to their inherent financial insecurity.

In 2011, this economic stress was increased due to Carol’s desire to purchase a new home. She did not like living in Mission Viejo and wanted to move to a different community. Eventually Respondent agreed to moving, and the couple entered into a purchase agreement for a home in Hermosa Beach. At the time of the incident on April 15, 2011, the home purchase was still in escrow and scheduled to close in June.

April 15, 2011 was a Friday. During the morning of April 15, Carol informed Respondent that there was going to be an additional closing cost of \$15,000 in order to purchase the Hermosa Beach home. Respondent was already concerned that putting together the “initial outlay” to purchase the home was going to be a problem and could only be accomplished if Carol reduced her normal level of shopping. Unfortunately, she was continuing to incur \$5,000-\$7,000 in credit card bills every month. News of the need to find another \$15,000 before the

June closing was especially upsetting to him. He viewed it as “a real problem.” To find that additional \$15,000 would require him to work even harder than he already was. This became the source of an argument between Respondent and Carol during the day.

Later that day, at some point during early evening, both Respondent and Carol became unhappy with their son, albeit for different reasons. Respondent had initially gotten into an argument with his son about the son’s baseball activities, during which Respondent used profanities and language that was highly insulting and demeaning. After that argument was concluded, Carol then got into an argument with the son because of the son’s announced intent to tear up an award certificate that he had received at school. Respondent, Carol and the son were all located in the kitchen of their home when these arguments were taking place. Although Carol told the son not to tear up the award, he went ahead and did so. She then angrily ordered him to go upstairs to his room. Before the son could get up the stairs, Respondent intervened in the situation to begin asking the son a series of questions to find out why the son was upset about the award. At some point the son started to cry, and Carol ordered Respondent to stop asking questions. He did not. The son, still crying, then ran up to his room.

As soon as the son was upstairs, Carol said to Respondent, “You are cruel, selfish and self-centered.” At that point, Respondent, by his own admission, “lost it”, due principally to Carol’s comments that he was selfish and self-centered. He and Carol were located physically fairly close to one another at the time of her comment. Responding to her comment, he moved toward her, saying angrily, “You want cruel. You want cruel. You want cruel.”

There is both agreement and disagreement about precisely what happened from that point forward. Respondent and Carol both agree that Respondent made one more comment and then touched Carol in an aggressive manner. They also agree that the touching was brief, lasting less

than five seconds⁴, and that it caused no injury. They also agree that Respondent, after this brief touching, stopped touching Carol, sat down on a nearby couch, and then stated angrily that he was no longer willing to go forward with the purchase of the home but instead wanted a divorce. Respondent then went upstairs, while Carol remained downstairs in the kitchen. Upstairs, he packed some of his clothes, talked to the two children, and then came back downstairs with his packed clothes, where Carol was still located. Once downstairs, he sat down on the stairs and put on his shoes while Carol remained in the room. He and Carol then talked about the logistics of cancelling the home purchase and getting their deposit back from the escrow account. They then exchanged keys for their respective cars. Respondent then left the house, leaving Carol and the children behind.

The major area of dispute between the two individuals is precisely where and how Respondent inappropriately touched Carol and what else he said while he was doing so.

With regard to disputed issues of what happened, Respondent testified that he grabbed his wife with one arm around the top of her shoulders and held her firmly for about three seconds while he made a comment disputing her claim that his conduct toward their son had been cruel. In contrast, Carol claims that Respondent put both of his hands around her neck. Although she agrees that he did not squeeze her neck or seek to choke her, she says that he “applied pressure” although she was always able to breathe and talk. Respondent adamantly denies Carol’s contention.

The other major area of dispute is Carol’s claim that Respondent made a statement suggesting that he might kill her when he was placing his hands on her throat. This claim is also disputed by Respondent.

⁴ Carol told the police that the touching lasted approximately three seconds. At trial, she said that it lasted closer to ten seconds. However, when she demonstrated at trial how long the touching occurred, the demonstration lasted approximately four seconds.

The burden of proof on the above two issues was with the State Bar. The evidence supporting Carol's claims falls far short of being clear and convincing.⁵ Instead, the court concludes that the overall circumstances indicate that her claims are, in fact, not credible.

Both Respondent and Carol agree that Respondent made no actual effort to hurt Carol at the time of the dispute, and they agree that Carol suffered no physical injury as a result of his action. Carol also testified that there had been no history of Respondent ever acting violently toward her in the past or ever trying to hurt her during an argument. Instead, she recalled that on the one occasion when Respondent had ever touched her in the past during an argument, he had grabbed her shoulder and then immediately let go of it (very similar to what Respondent said happened here). Carol said that on that prior occasion Respondent appeared to have been more surprised by his action than she was.

The only evidence that Respondent touched Carol's throat is Carol's testimony. Although she now claims that she saw redness on her throat later that night, there is no evidence that any such redness was observed by the police or by Carol's sister, both of whom came over to the house later that night to discuss the situation with Carol. Nor was any effort made by Carol or anyone else to record any such claimed injury, such as by photographing the redness.

Carol's claim that Respondent said "I will kill you" is also not corroborated by anything other than her testimony.⁶ Again, there is no evidence that Respondent actually attempted to hurt

⁵ As stated recently by the Review Department in *In the Matter of Allen* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198, 201: "This showing requires that the evidence must be 'so clear as to leave no substantial doubt' and 'sufficiently strong to command the unhesitating assent of every reasonable mind.' (*Sheehan v. Sullivan* (1899) 126 Cal. 189, 193.) Moreover, we resolve all reasonable doubts in [a respondent's] favor, and when equally reasonable inferences may be drawn from the stipulated facts, we accept those inferences that lead to a conclusion of innocence. (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1216.)"

⁶ The State Bar relies on a statement made by Respondent to the police on the following day when he was told by them of Carol's claim that he had said, "I'll kill you." The police report

Carol or ever did so. Further, Carol's statement that this alleged threat caused her to fear for her safety and the safety of her children is belied by her description of what happened after the claimed threat was allegedly made. When Respondent went upstairs to pack his clothes and talk with the children, she neither followed him up the stairs to safeguard the kids nor took advantage of his presence in another part of the house to call the police or run to a neighbor for protection. Then, when he came back down the stairs, Carol made no complaint about his actions, took any steps to be protective of the kids or her own safety, or sought any assurance that he did not intend to cause her harm. As previously noted, her only reported actions were to discuss with Respondent how to make certain that they got their deposit back from the pending home sale and then to participate in exchanging car keys.

Nor did Carol immediately call the police to complain of Respondent's actions and purported threat immediately after he had left. Instead, she only called her sister, who lived an hour and a half away in Lake Elsinore, and asked her to come over. There is no evidence that she even told the sister of the claimed threat in this phone call. While Carol now claims that her purpose in calling her sister was to have "protection", calling a sister who lives so far away is hardly an expected first line of defense for someone who believes that he or she is in imminent danger of being attacked or killed.

Nor did Carol call the police during the 90 minutes or so that she was waiting for her sister to arrive at the house in Mission Viejo. Nor did she go to any of the neighbors or call

indicates that Respondent replied, "If she says I did, I probably did." Respondent testified credibly at trial that this comment was made by him as a denial by sarcasm of the allegation. The words of the comment are certainly more subject to that interpretation than to any intended admission by Respondent. Moreover, the police officer who authored the report testified at trial that Respondent was never asked whether he had said those words or made such a threat. The officer also testified that before Respondent made the comment about the wife's accusations, Respondent had already given to the interrogating officers his recollection of the prior evening's activities, a recollection then that is nearly identical to what Respondent told this court at trial.

anyone closer to her home to tell them of the situation or to seek a more immediate source of “protection.”

Carol also did not call the police as soon as her sister first arrived at the house. Instead, after first talking with her sister, she went to the grocery store. She also called her divorce attorney, whom she had previously retained at some point during the prior year.

It was not until several hours later, after Carol had returned from shopping, that she called the police. She testified that she did so only after being encouraged to do so by a female friend to whom she had talked at the grocery store.⁷ She said that her intent in calling the police that night was not to have Respondent arrested, but rather to secure an Emergency Protective Order (EPO).⁸

Carol’s claims as to both the sequence of events and the words purportedly spoken have also changed over time, further weakening the credibility of her claimed recollection. According to a portion of the police report read into the record at trial, Carol told the police that night that Respondent had said, “You want cruel? You want cruel? You want cruel?” and then pushed her away. After pushing her away, she recounted that Respondent then said, “If you want cruel, I’ll kill you.” During the trial of this matter, she stated and demonstrated for the court that Respondent had said, without any break and in a four second period of time, “You want cruel? You want cruel? You want cruel? I’ll kill you.” She testified that he still had his hands on her throat when he said the last sentence and stated that it was only after this alleged threat was made that he pushed her away.

⁷ Neither this friend nor Carol’s sister appeared to testify at trial. Nor did either of the two children or the police officer who actually met with Carol that night appear as witnesses.

⁸ Having an EPO issued, which would only be effective after it was subsequently served on Respondent, would hardly have solved any concern by Carol that she was in any immediate danger.

The fact that Carol’s version of the night’s events is not persuasive does not detract from the validity of the criminal conviction nor excuse Respondent’s conduct. A criminal conviction, including a plea of guilty or nolo contendere, is conclusive proof that the attorney committed all acts necessary to constitute the offense. (*Chadwick v. State Bar* (1989) 49 Cal. 3d 103, 110; *In re Ford* (1988) 44 Cal.3d 810, 815; *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110, 114; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935 [nolo contendere].) Penal Code section 243, subdivision (e)(1), prohibits the commission of a battery against a spouse. “Battery” is defined in Penal Code section 242 to be “any willful and unlawful use of force or violence upon the person of another.” Respondent’s admitted actions in willfully and angrily grabbing Carol, without her consent and in an offensive manner, and then pushing her away constituted a criminal battery against his spouse. Such conduct, while not constituting an act of moral turpitude, is conduct warranting discipline. (*In re Hickey* (1990) 50 Cal.3d 571; *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.)

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)⁹ The court finds the following with regard to aggravating factors.

Lack of Insight

Respondent fails to demonstrate any realistic recognition of or remorse for his wrongdoings and instead continues to assert that he did nothing wrong. “The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Respondent’s continued insistence that his

⁹ All further references to standard(s) or std. are to this source.

conduct was not inappropriate is “particularly troubling” because it suggests his conduct may recur. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595; see also *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68.)

Significant Harm

The court declines to find that Respondent’s misconduct caused any significant harm. The inappropriate touching by Respondent was brief and did not cause injury. Nor is there clear and convincing evidence of anything more than possible momentary upset caused by the touching. Although Carol was successful in securing both domestic and criminal protective orders against Respondent, she testified that he has always been in complete compliance with all restrictions. Indeed, she volunteered at trial that he is sometimes hesitant to do things involving her and the children that are allowed by the orders. Further, since the orders were issued, she has stipulated on several occasions since their issuance to modifications reducing the scope of the restrictions on Respondent.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) In addition to the comments immediately above, the court finds the following with regard to mitigating factors.

No Prior Discipline

Respondent had practiced law in California for nearly 16 years prior to the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent’s lengthy tenure of discipline-free practice is entitled to significant weight in mitigation. (Std. 1.2(e)(i); *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88.)

Remedial Steps re Anger Management

Since June 2011, Respondent has been seeking counseling in emotional management, parenting and depression from a licensed marriage and family therapist. This therapist testified at trial regarding Respondent's progress in those issues and opined that he does not present a risk "to anyone." In addition, the court heard substantial evidence regarding Respondent's favorable response and personal growth resulting from the court-ordered therapies. Finally, the court heard considerable evidence from Carol regarding the aberrational nature of this particular misconduct and his treatment of her and the children since April 15, 2011. In the context of the conviction and circumstances here, such evidence that future misconduct will not recur is a mitigating factor. (*In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 412.)

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. 1.3; *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.) 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.)

The State Bar contends that standards 3.4 and 2.6 mandate that any discipline for a criminal conviction not involving moral turpitude must result in disbarment or suspension. The State Bar cites no case authority for any such proposition. Nor does it provide any explanation for the many cases from both this court and the Supreme Court reaching a contrary conclusion. See, e.g., *In re Kelley* (1990) 52 Cal.3d 487 [public reproof for second DUI]; *In re Titus* (1989) 47 Cal.3d 1105 [public reproof for convictions of carrying a concealed weapon, carrying a loaded firearm, and reckless driving]; *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201 [misdemeanor conviction for lewd conduct; Review Department reduced discipline from stayed suspension to public reproof].)

Looking to the case law, the Review Department has noted the relatively few cases involving assaultive behavior. (*In the Matter of Burns, supra*, 3 Cal. State Bar Ct. Rptr. at p. 415.) In all of the prior cases, the respondent's conduct has resulted in actual physical harm to others and involved other, significant mitigating factors.

Of the existing cases, the State Bar points to the Supreme Court's decision in *In re Hickey* (1990) 50 Cal.3d 571 as most instructive. In that case the respondent was actually suspended for 30 days, which is what the State Bar recommends here.

A review of the *Hickey* decision, however, reveals that the misconduct in that matter was significantly more significant than that involved here. The respondent there had repeatedly assaulted and battered his wife, including slapping her across the face, swinging at her with his fist, and striking her in the head with a gun. He had also threatened her and physically attacked and injured a female bystander, who had sought to intervene on his wife's behalf on one occasion. In connection with this abusive misconduct, the respondent there was arrested and eventually convicted of carrying a concealed weapon. Respondent's conduct here is significant

when compared with the misconduct there. Moreover, the discipline in the *Hickey* matter also included the respondent's culpability for mishandling of an unrelated client matter.

In view of the nature of Respondent's misconduct here and the many mitigating factors, this court concludes that a reproof, coupled with certain conditions of reproof, will be both adequate and appropriate and that an order of suspension is both unnecessary and unjustified. In view of the fact that Respondent has not yet fully accepted the inappropriateness of his actions, the court concludes that the reproof should be elevated to a public one. Accordingly, the court orders the public reproof and conditions of reproof set forth below.

DISCIPLINE

Public Reproof

Accordingly, it is ordered that respondent **Hugh Philip Gortler**, Member No. 177417, is hereby publicly reproofed. Pursuant to the provisions of rule 5.127 of the Rules of Procedure, the reproof shall be effective when this decision becomes final.

Conditions of Reproof

Further, pursuant to rule 9.19 of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the interests of Respondent and the protection of the public will be served by the conditions specified below being attached to the reproof imposed in this matter. Failure to comply with any of the conditions attached to this reproof may constitute cause for a separate disciplinary proceeding for willful breach, *inter alia*, of rule 1-110 of the Rules of Professional Conduct.

Respondent is hereby ordered to comply with the following conditions attached to his public reproof for a period of one year following the effective date of the reproof imposed in this matter:

1. Respondent must comply with the terms of his criminal sentencing and 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).¹⁰ However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report

¹⁰ 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.

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.

- 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.)¹¹

6. Respondent's period of reprobation will commence on the effective date of this order imposing discipline in this matter.

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.

Dated: November _____, 2012

DONALD F. MILES
Judge of the State Bar Court

¹¹ Respondent is not required to take and pass the Multistate Professional Responsibility Examination, this court concluding that such is not required to protect the public. (*In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175, 180.)