

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case No.: **07-O-14677-LMA**  
)  
**MICHAEL JOHN GUGLIELMINO,** )  
) **DECISION**  
**Member No. 104484,** )  
)  
A Member of the State Bar. )

**I. INTRODUCTION**

In this original disciplinary proceeding, respondent **MICHAEL JOHN GUGLIELMINO**<sup>1</sup> is charged with violating his duty, under Business and Professions Code section 6068, subdivision (k),<sup>2</sup> “To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.” More specifically, respondent is charged with violating seven of the fourteen probation conditions that the Supreme Court imposed on him in its March 29, 2007, order in *In the Matter of Michael John Guglielmino on Discipline*; case number S149815 (State Bar Court case number 05-O-02792, et al.) (hereafter *Guglielmino I*).

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<sup>1</sup> Respondent was admitted to the practice of law in the State of California on December 3, 1982, and has been a member of the State Bar of California since that time.

<sup>2</sup> Unless otherwise noted, all further statutory references are to the Business and Professions Code.

For the reasons set forth *post*, the court finds that respondent is culpable of the charged misconduct and recommends, inter alia, that respondent be placed on 150 days' actual suspension and that he be placed on a new four-year period of probation on substantially identical conditions to those previously imposed on him in *Guglielmino I*. The court declines to order respondent's involuntary inactive enrollment under section 6007, subdivision (d)(1). (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531-532.)

Deputy Trial Counsel Treva R. Stewart appeared for the Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar). Attorney Craig K. Martin appeared for respondent.

## **II. PERTINENT PROCEDURAL HISTORY**

The State Bar initiated this proceeding by filing a notice of disciplinary charges (hereafter NDC) against respondent on January 23, 2008. Thereafter, respondent filed his response to the NDC on March 5, 2008.

On July 29, 2008, the parties filed a stipulation as to facts and admission of documents.<sup>3</sup> Trial was held on July 30, 2008. After posttrial briefing, the court took the matter under submission for decision on September 2, 2008.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This court's findings of fact are based on (1) the court's official files in this proceeding and in State Bar Court case number 05-O-02792 (Evid. Code, § 451, et seq.; *In the Matter of*

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<sup>3</sup> In their stipulation, the parties improperly purport to *dismiss* paragraphs 8 (proof of cancellation of overdraft protection) and 9 (proof of cancellation of ATM debit card) of the NDC. (*In the Matter of Respondent AA* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 721, 726 [Once the State Bar invokes this court's jurisdiction by filing disciplinary charges against an attorney, the disposition of those charges becomes a judicial responsibility.].) In the interest of justice, the court construes the parties' stipulation as containing a motion to dismiss paragraphs 8 and 9 of the NDC in the furtherance of justice. (Cf. State Bar Ct. Rules of Prac., rule 1223(j).) The court grants the motion to dismiss and dismisses paragraphs 8 and 9 of the NDC with prejudice.

*Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 387-388); (2) respondent's response to the NDC in this proceeding; (3) the parties' July 29, 2008, stipulation; and (4) the exhibits and testimony admitted into evidence at trial. A number of the court's findings of fact are based in large part on credibility determinations, which determinations the court carefully made after considering multiple relevant factors (e.g., Evid. Code, § 780).

The State Bar must establish the charged violations of section 6068, subdivision (k) by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.) Willfulness in the context of probation violations "implies simply a purpose or willingness to commit the act, or to make the omission referred to" (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467); it "does not require bad faith or actual knowledge of the provision which is violated" (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186).

The construction of a court order (including any conditions of probation imposed therein) is a question of law for the court, and the parties' subjective beliefs as to its meaning are irrelevant. (*In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813, 817; *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244, 252 & fn. 4.)

#### **A. Findings of Fact**

In its order in *Guglielmino I*, the Supreme Court placed respondent on two years' stayed suspension and four years' probation on conditions, but no actual suspension. In addition, the Supreme Court ordered that respondent take and pass the Multistate Professional Responsibility Examination (hereafter MPRE) within one year after the effective date of its order in

*Guglielmino I*.<sup>4</sup> Notably, the Supreme Court imposed the discipline in *Guglielmino I*, including

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<sup>4</sup> Respondent failed to take and pass the MPRE within the time ordered. Accordingly, on May 9, 2008, the review department filed an order placing respondent on actual suspension from the practice of law effective May 27, 2008. (Cal. Rules of Court, rule 9.10(b); *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 9.) Then, on June 2, 2008, respondent filed a motion seeking a stay of the his MPRE suspension and an extension of time to take and pass the MPRE. On

each of the probation conditions and the MPRE requirement, on respondent in accordance with a stipulation as to facts, conclusions of law, and disposition that respondent entered into and that the State Bar Court approved in an order filed on October 27, 2006, as modified by an order filed on November 29, 2006, in case number 05-O-02792, et al.

The Supreme Court's order in *Guglielmino I* became effective on April 28, 2007, (Cal. Rules of Court, rule 9.18). Accordingly, respondent's four-year probation in *Guglielmino I* also began on April 28, 2007.

A copy of the Supreme Court's order *Guglielmino I* was properly served on respondent by mail on March 29, 2007. In addition, on May 14, 2007, the State Bar's Office of Probation mailed respondent a "reminder letter" regarding the Supreme Court's order in *Guglielmino I*. In its reminder letter, the Office of Probation set forth each of the conditions of probation imposed on respondent under the Supreme Court's order in *Guglielmino I*. Respondent admits that he actually received the Office of Probation's reminder letter shortly after it was mailed to him on May 14, 2007. In addition, respondent admits that, at all times pertinent hereto, he had actual notice of and was aware of the Supreme Court's order in *Guglielmino I*, of his probation conditions, and of his MPRE requirement.

In the NDC, the State Bar charges that respondent willfully violated seven of the conditions of his probation by: (1) failing to contact the Office of Probation and to schedule a meeting with his assigned probation deputy within the first 30 days of his probation; (2) failing to provide the Office of Probation, within the first 60 days of his probation, with proof that he

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June 9, 2008, the State Bar Court Presiding Judge filed an order temporarily staying respondent's MPRE suspension pending the review department's ruling on his request for an extension of time. (Rules Proc. of State Bar, rule 321(a)(3).) On June 20, 2008, the review department denied respondent's request for an extension of time and ordered respondent actually suspended effective July 21, 2008. (*Segretti v. State Bar, supra*, 15 Cal.3d at p. 891, fn. 9.) Thereafter, respondent took and passed the August 2008 MPRE; accordingly, on September 11, 2008, the review department filed an order terminating his MPRE suspension.

had paid the sanctions totaling \$1,000 that were imposed on him in San Francisco Superior Court case number CGC-02-416265; (3) failing to pay and to provide the Office of Probation with proof of payment of restitution to V. Fuller in the amount of \$2,000 together with 10 percent interest thereon within the first 60 days of his probation; (4) never filing his first two quarterly probation reports; (5) never filing his first three certifications from a certified public accountant confirming that he has complied with the State Bar's Trust Account Record Keeping Standards (hereafter CPA reports);<sup>5</sup> (6) failing to develop a law office management/organization plan within the first 90 days of his probation; and (7) failing to provide the Office of Probation with proof of his completion of six hours of Minimum Continuing Legal Education (hereafter MCLE) approved courses in law office management. The parties' July 29, 2008 stipulation in this proceeding conclusively establishes respondent's culpability for each of these violations of his probation.

Notwithstanding respondent's claim that "His failure to fully comply with the conditions of his probation was caused by physical and mental [difficulties], which [were] undiagnosed until October of 2007," the court finds that respondent deliberately chose to not comply with the foregoing seven conditions of his probation even though he had the ability to do so. Instead of complying the probation conditions to which he stipulated and which were imposed on him in a *final* Supreme Court disciplinary order, respondent drafted and filed, on June 28, 2007, a meritless motion seeking relief from the costs award in the Supreme Court's order in *Guglielmino I*<sup>6</sup> and improperly seeking to *relitigate* the stipulated probation conditions

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<sup>5</sup> If he did not hold any client or trust funds during a reporting period, respondent was to have filed a statement to that effect under oath. Respondent, however, did not file any such statements.

<sup>6</sup> Respondent's motion failed to even comply with Rules of Procedure of the State Bar, rule 282(b)(2), which mandates that motions seeking relief from costs be supported "by a completed financial statement of the respondent in the form prescribed by the Court."

mandating (1) that he pay the \$1,000 in sanctions imposed on him by the San Francisco Superior Court and (2) that he pay restitution of \$2,000 together with 10 percent interest thereon to V. Fuller within the first 60 days of his probation.

Even though respondent failed to pay and provide the Office of Probation with proof of payment of restitution to V. Fuller within the first 60 days of his probation, he finally made full restitution to Fuller before trial in this proceeding.

At trial, respondent proffered exhibit B, which he contends establishes that he completed six hours of MCLE courses in law office management before trial. The court declines to accept exhibit B as belated compliance with respondent's MCLE probation condition because it does not clearly establish that all of the 6 hours were in law office management.

At trial, respondent also proffered into evidence exhibit D, which is a declaration he executed in support of an application to vacate and set aside the \$1,000 in sanctions that the San Francisco Superior Court imposed on him. The court declines to accept exhibit D as compliance with respondent's probation condition mandating that he pay, within the first 60 days of his probation, the \$1,000 in sanctions imposed on him by the San Francisco Superior Court.

### **C. Conclusions of Law**

Each time respondent willfully violated the conditions of his probation as found *ante*, he also willfully violated his duty under section 6068, subdivision (k).

## **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

### **A. Mitigation**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>7</sup>

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<sup>7</sup> All further references to standards are to this source.

### **1. Physical and Mental Difficulties**

Respondent testified that he suffers from serious diabetes, depression, and sleep apnea. He claims to have had serious difficulties in performing administrative tasks at the time of his probation violations. The court does not find respondent's claims to be entirely credible. Nor does the court find clear evidence of a causal connection between respondent's physical and emotional difficulties and his probation violations. Nonetheless, the court finds that respondent's physical and emotional difficulties are entitled to some mitigating weight. (*In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 340-341.)

### **2. Good Character Testimony**

Two attorneys testified as to respondent's good moral character and as to his legal skills. In addition, one client testified that he was happy with respondent's representation and that he believes that respondent is good attorney. (See *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1065, 1069 [Diligently and competently performing legal work is properly considered as evidence of good moral character.]) Respondent is entitled to some mitigation for this good character testimony. (See, e.g., *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591.)

### **3. Cooperation with State Bar**

The court gives very little mitigating weight to respondent's stipulating to his numerous probation violations in this proceeding because none of the violations would have been difficult to establish at trial. (*In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 567.)

## **B. Aggravation**

### **1. Prior Record of Discipline**

In aggravation, respondent has one prior record of discipline: *Guglielmino I*. (Std. 1.2(b)(i).) In *Guglielmino I*, respondent stipulated to improperly managing his client trust account and to engaging in misconduct in three client matters. In the first client matter, respondent failed to account for \$3,500 in advanced fees (Rules Prof. Conduct, rule 4-100(B)(3)).<sup>8</sup>

In the second client matter, respondent failed to perform legal services competently (rule 3-110(A)); failed to obey multiple superior court orders to show cause and failed to pay sanctions totaling \$1,000 (§ 6103); failed to communicate with the client (§ 6068, subd. (m)); and failed to release the client's file to successor counsel (rule 3-700(D)(1)).

In the third client matter, respondent failed to perform legal services competently (rule 3-110(A)); failed to refund any part of \$2,000 in advanced fees (rule 3-700(D)(2)); failed to release the client file after termination of employment (rule 3-700(D)(1)); and failed to account for \$2,000 in advanced fees (rule 4-100(B)(3)).

### **2. Multiple Acts**

Respondent's misconduct in this proceeding involves 10 separate violation of his probation. (Std. 1.2(b)(ii).) This is a very serious aggravating circumstance.

### **3. Indifference**

Respondent's failed to rectify his probation violations either after the Office of Probation notified him of his violations or after the State Bar filed the NDC in this proceeding. Once the State Bar filed the NDC, respondent should have *promptly*: (1) contacted the Office of Probation and scheduled a meeting with his assigned probation deputy; (2) filed his first two quarterly

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<sup>8</sup> Unless otherwise indicated, all further references to rules are to the Rules of Professional Conduct of the State Bar of California.

probation reports; (3) filed his first three CPA reports or statements declaring that he did not possess any client or trust funds; (4) developed and submitted to the Office of Probation a law office management/organization plan; and (5) provided the Office of Probation with proof of his completion of six hours of MCLE courses in law office management. Respondent's failure to promptly perform these foregoing acts once the State Bar filed the NDC not only defies understanding, it clearly establishes his indifference towards rectification, which is yet another very serious aggravating circumstance. (Std. 1.2(b)(v); *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702; *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.)

## V. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to case law for guidance. (*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.)

The applicable standard in this proceeding is standard 2.6, which provides that a willful violation of section 6068 "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3." The generalized language of standard 2.6 offers little guidance to the court. (*In re Morse* (1995) 11 Cal.4th 184, 206.) Accordingly, the court looks to

case law. The court also looks to standard 1.7(a), which provides that that, when an attorney has a prior record 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 imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.”

“[T]here has been a wide range of discipline imposed for probation violations from merely extending probation . . . to a revocation of the full amount of the stayed suspension and imposition of the amount as an actual suspension.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.) In determining the level of discipline for probation violations, the court is to consider not only the mitigating and aggravating circumstances, but also the seriousness of the violations, the respondent’s efforts to comply with the probation conditions, the respondent’s recognition of his misconduct, and the total length of stayed suspension previously imposed in the underlying case. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) In addition, even though respondent’s actual suspension for failing to take and pass the MPRE within the time ordered (see footnote 4 *ante*) is not a “prior record of discipline” under standard 1.2(b)(i), this court considers respondent’s MPRE suspension in determining the appropriate level of discipline in this proceeding. (*In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 331; *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 531-532; cf. std. 1.2(b)(iii).) And that is because respondent’s MPRE suspension is yet another indication that he is either unwilling or unable to comply with *final* Supreme Court disciplinary orders.

Ordinarily, attorney disciplinary probation is effective "only when the attorneys placed on probation are effectively monitored to ensure (1) that they do not again engage in misconduct

and (2) that they are undertaking to conform their conduct to the ethical strictures of the profession. (Citations.)" (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.) Consequently, "an attorney probationer's filing of quarterly probation reports is an important step towards the attorney's rehabilitation" (*ibid*) and an important means of protecting the public because it permits "the State Bar to monitor [the attorney's] compliance with the State Bar Act and the Rules of Professional Conduct" (*In the Matter of Meyer, supra*, 3 Cal. State Bar Ct. Rptr. at p. 705, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605).

“At a minimum, quarterly probation reporting is an important step towards an attorney probationer’s rehabilitation because it requires the attorney, four times a year, to review and reflect upon his professional conduct . . . . In addition, it requires the attorney to review his conduct to ensure that he complies with all of the conditions of his disciplinary probation.” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.)

The Supreme Court's order in *Guglielmino I* provided respondent with an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in the present matter strongly suggests that respondent is indifferent to his duty to obey Supreme Court disciplinary orders. In fact, respondent's failure to strictly comply with the conditions of probation imposed on him in *Guglielmino I* “ ‘demonstrates a lapse of character and a disrespect for the legal system that directly relate to [his] fitness to practice law and serve as an officer of the court. [Citation.]’ [Citation.]” (*In the Matter of Tiernan, supra*, 3 Cal. State Bar Ct. Rptr. at p. 530.)

With respect to the appropriate amount of actual suspension to recommend in the instant proceeding, the court concludes that it would be excessive to recommend a one-year actual suspension, which is the actual suspension recommended and imposed in *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445. In *Howard*, the attorney failed to file two probation reports, failed to deliver a former client’s personal financial records to an

accountant (which prevented the accountant from determining whether the attorney owed restitution to the former client), and failed to otherwise establish whether he had complied with a prior civil court order to turn over files and financial records to the former client. In addition, in *Howard*, the attorney's failure to deliver the former client's records and his default in the probation revocation proceeding established an utter lack of cooperation with the State Bar. Of course, no such *utter* lack of cooperation is present in the instant proceeding.

The court also concludes that it would be insufficient to recommend a 90-day actual suspension, which is the actual suspension recommended and imposed in *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678. Even though there were more extensive probation violations in *Laden*, there was also significantly more mitigation in *Laden* than in the present case. In *Laden*, the attorney's 19 untimely monthly restitution payments and seven late probation reports were ameliorated by a change in the management of his law practice, financial hardship, cooperation and candor with the victim, community service, recognition of the nature of his misconduct, and belated but full satisfaction of *all* probation conditions. There the review department observed that the attorney's "successful struggle to ultimately meet his obligations in spite of substantial financial hardship reflects a positive attitude toward his probation and demonstrates his understanding of the rehabilitative and public policy goals of disciplinary probation. [Citation.]" (*Id.* at p. 684.)

On balance, the court concludes that a six-month actual suspension would ordinarily be appropriate in the instance case. However, in light of the established mitigation in the present proceeding, the court concludes that a five-month or 150-day actual suspension is appropriate. In addition, the court concludes that respondent should be required to demonstrate that he is now willing and capable of fully engaging in the rehabilitative process by strictly complying with the probation conditions that were originally imposed on him in *Guglielmino I* (and to which

respondent stipulated) by imposing substantially similar conditions on him for four years prospectively. (*In the Matter of Meyer, supra*, 3 Cal. State Bar Ct. Rptr. at p. 705.) The court does not, however, recommend that Guglielmino be ordered to take and pass a professional responsibility examination because he was required to do so in *Guglielmino I*.

## VI. RECOMMENDED DISCIPLINE

The court recommends that respondent **MICHAEL JOHN GUGLIELMINO** be suspended from the practice of law in the State of California for two years; that execution of the two-year suspension be stayed; and that he again be placed on probation for four years on the following conditions.

1. Guglielmino is actually suspended from the practice of law in the State of California for the first 150 days of his probation.
2. Guglielmino is to comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar, and all of the conditions of this probation.
3. Guglielmino is to 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)(1)). In addition, Guglielmino is to maintain, with the State Bar's Office of Probation, his current home address and telephone number (Bus. & Prof. Code, § 6002.1, subd. (a)(5)). Guglielmino's home address and telephone number is not to be made available to the general public unless it is his official address on the State Bar's Membership Records. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent is to promptly, but in no event later than 10 days after a change, report any changes in this information to the Membership Records Office and the Office of Probation.
4. Guglielmino is to submit written quarterly reports to the State Bar's Office of Probation on each January 10, April 10, July 10, and October 10. Under penalty of perjury under the laws of the State of California, Guglielmino must state whether he has complied with the State Bar Act, the Rules of Professional Conduct of the State Bar, and all conditions of this probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of any applicable privilege, Guglielmino is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to him,

whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.

6. Unless he has done so before the effective date of this probation, Guglielmino is to attend and satisfactorily complete the State Bar's Ethics School -- Client Trust Accounting School within the first year of this probation and to provide satisfactory proof of completion of that program to the State Bar's Office of Probation within that same time period. The school is offered periodically both at 180 Howard Street, San Francisco, California 94105-1639 and at 1149 South Hill Street, Los Angeles, California 90015-2299. Arrangements to attend the school must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Guglielmino's MCLE requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing this school. (Accord, Rules Proc. of State Bar, rule 3201.)
7. During each calendar quarter in which Guglielmino receives, possesses, or otherwise handles funds or property of a client (as used in this probation condition, the term "client" includes all persons and entities to which Guglielmino owes a fiduciary or trust duty) in any manner, Guglielmino must submit, to the State Bar's Office of Probation with the probation report for that quarter, a certificate from a California Certified Public Accountant certifying:
  - (a) whether Guglielmino has maintained a bank account that is designated as a "Trust Account," "Clients' Funds Account," or words of similar import in a bank in the State of California (or, with the written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction);
  - (b) whether Guglielmino has, from the date of receipt of the client funds through the period ending five years from the date of appropriate disbursement of the funds, maintained:
    - (1) a written ledger for each client on whose behalf funds are held that sets forth:
      - (a) the name and address of the client,
      - (b) the date, amount, and source of all funds received on behalf of the client,
      - (c) the date, amount, payee, and purpose of each disbursement made on behalf of the client, and
      - (d) the current balance for the client;
    - (2) a written journal for each bank account that sets forth:
      - (a) the name of the account,
      - (b) the name and address of the bank where the account is maintained,
      - (c) the date, amount, and client or beneficiary affected by each debit and credit, and
      - (d) the current balance in the account;
    - (3) all bank statements and cancelled checks for each bank account; and

- (4) each monthly reconciliation (balancing) of (1), (2), and (3) and, if there are any differences, an explanation of each difference; and
- (c) whether Guglielmino has, from the date of receipt of all securities and other properties held for the benefit of a client through the period ending five years from the date of appropriate disbursement of the securities and other properties, maintained a written journal that specifies:
  - (1) each item of security and property held,
  - (2) the person on whose behalf the security or property is held,
  - (3) the date of receipt of the security or property,
  - (4) the date of distribution of the security or property, and
  - (5) the person to whom the security or property was distributed.

If Guglielmino does not receive, possess, or otherwise handle client funds or property in any manner in during an entire calendar quarter and if Guglielmino includes, in his probation report for that quarter, a statement to that effect under penalty of perjury under the laws of the State of California, Guglielmino is not required to submit a certificate from a certified public accountant for that quarter.

8. Within the first 60 days of this probation, Guglielmino is to pay the sanctions totaling \$1,000 that the San Francisco Superior Court imposed on him in case number CGC-02-416265 even if the superior court has vacated or hereafter vacates its sanctions orders.
9. Guglielmino's new four-year period of probation in the present proceeding will commence on the effective date of the Supreme Court order in this proceeding. At the expiration of the period of this probation, if Guglielmino has complied with all the terms of this probation, the order of the Supreme Court suspending him from the practice of law for two years in the present proceeding will be satisfied and the suspension will be terminated.

## **VII. RULE 9.20 & COSTS**

The court recommends that Guglielmino be ordered to comply with the requirements of rule 9.20 of the California Rules of Court and to 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 proceeding.<sup>9</sup>

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<sup>9</sup> Guglielmino 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 a contempt, an attorney's failure to comply with rule 9.20 is also cause for disbarment, suspension, and revocation of any pending disciplinary probation. (Cal. Rules of Court, rule 9.20(d).)

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: December 1, 2008.

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**LUCY ARMENDARIZ**  
Judge of the State Bar Court