PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

FILED
MAY 19 2017
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 14-O-05046
	)	
MATTHEW POWELL FLETCHER,	)	OPINION
	)	
A Member of the State Bar, No. 189923.	)	
	)	

This disciplinary proceeding arises from allegations that Matthew Powell Fletcher accepted fees from third parties to represent a client without obtaining the client's written consent, and failed to account for the funds he received. The hearing judge found Fletcher culpable of all charged misconduct. Emphasizing aggravating circumstances, the judge recommended an actual suspension of 45 days. The Office of Chief Trial Counsel of the State Bar (OCTC) requested restitution, which the judge denied because Fletcher was not charged with failing to refund unearned fees.

Fletcher appeals. He maintains he was denied a fair trial due to ineffective assistance of counsel, contests the factual findings establishing his culpability, and challenges the hearing judge's findings in aggravation and mitigation. He argues that even if he is found culpable, the judge's recommended discipline is unduly harsh. OCTC does not appeal and asks that we affirm the hearing judge's findings and recommended discipline. Additionally, OCTC requests that we recommend a probation condition that Fletcher provide an accounting and return any funds "not justifiably accounted for as earned."

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we find that Fletcher was not denied a fair trial and is culpable as charged. We do not affirm several of the

aggravation findings, however, applying aggravation only for Fletcher's prior discipline. Although we are hesitant to reduce a hearing judge's recommended suspension by 15 days, we do so here because we assign significantly less aggravation than the hearing judge found. We find that a 30-day actual suspension, with probation conditions, is the appropriate discipline in light of Fletcher's prior discipline, his present misconduct, and the comparable case law.

I. PROCEDURAL BACKGROUND

A. Procedural History

On August 3, 2015, OCTC filed a two-count Notice of Disciplinary Charges (NDC) alleging that Fletcher: (1) accepted $20,500 from nonclients as compensation for representing a client without obtaining the client's informed written consent, in violation of rule 3-310(F) of the Rules of Professional Conduct;[1] and (2) failed to account for the funds he received, in violation of rule 4-100(B)(3).[2]

Prior to the scheduling of trial, OCTC filed a motion seeking authorization to depose Daniel A. Daniel, Fletcher's former client (the complaining witness), who was in county jail awaiting trial on murder charges. The hearing judge granted OCTC's motion on November 19, 2015, and the deposition was held on December 14, 2015. In attendance were Fletcher, Sherell McFarlane representing OCTC, Daniel, and his attorney, Thomas R. Loversky.

On February 17, 2016, OCTC moved to admit Daniel's deposition transcript in lieu of his live testimony because he remained incarcerated. The hearing judge ordered Fletcher to file a

[1] All further references to rules are to this source unless otherwise noted. Rule 3-310(F) provides that an attorney must not accept compensation for representing a client from someone other than the client unless: (1) there is no interference with the attorney's independence of professional judgment or with the client-lawyer relationship; (2) information relating to the client's representation is protected under Business and Professions Code section 6068, subdivision (e); and (3) the attorney obtains the client's informed written consent. All further references to sections are to the Business and Professions Code.

[2] Rule 4-100(B)(3) provides that a member must "[m]aintain complete records of all funds . . . of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them . . . ."

response to OCTC's motion. Fletcher represented on the record at a March 14, 2016, pretrial conference that he did not oppose the admission of Daniel's deposition testimony; he also filed a statement of nonopposition on March 17, 2016. The hearing judge granted OCTC's motion to admit the deposition transcript.

Following continuances due to Fletcher's need to obtain counsel to represent him in the disciplinary proceeding, trial was held on March 21, 2016. Prior to the start of trial, the parties filed a Stipulation of Facts and Admission of Documents (Stipulation). The hearing judge issued his decision on July 6, 2016.

B. Fletcher Is Not Entitled to a New Trial

Fletcher argues that he was denied a fair trial because he received ineffective assistance of counsel. Specifically, he asserts that his counsel's lack of understanding of State Bar hearing procedures prejudiced him. However, the Supreme Court has held that the right to effective assistance of counsel depends on a demonstrated right to counsel, which does not exist in disciplinary proceedings. (*Walker v. State Bar* (1989) 49 Cal.3d 1107, 1116.) Thus, an assertion of ineffective assistance of counsel has no merit here. The Supreme Court has made clear that a respondent's "only due process entitlement is to a fair hearing overall. [Citations.]" (*Dahlman v. State Bar* (1990) 50 Cal.3d 1088, 1094-1095.) The hearing judge provided Fletcher with a fair hearing, as required.

II. FACTUAL BACKGROUND[3]

Fletcher was admitted to the practice of law in California on October 14, 1997. He is a criminal defense attorney who owns and operates a law office in Long Beach, California.

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[3] The facts are based on the Stipulation, trial testimony, documentary evidence, including the deposition testimony of Daniel that was admitted at trial, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

In May 2013, Daniel's brother, Chris Daniel (C. Daniel) met with Fletcher at his office to ask him to represent Daniel on charges of murder and attempted murder in a pending criminal case in Los Angeles Superior Court. Fletcher agreed to represent Daniel for a $30,000 fee, but did not enter into a written retainer agreement. Either at this meeting or shortly thereafter, Fletcher gave C. Daniel the bank account and routing numbers for his law firm checking account at Wells Fargo Bank.

After speaking with Fletcher, C. Daniel contacted Daniel's fiancée, Shannon Gonzales, who lived in New Mexico. Gonzales agreed to pay a portion of Daniel's legal expenses and C. Daniel gave her Fletcher's account information to deposit the funds. Gonzales obtained the money by borrowing $6,000 from her 401(k) retirement plan. On June 7, 2013, she wrote a check for $6,000 payable to the Law Office of Matthew Fletcher, with a notation of "Daniel A. Daniel" on the memo line. At a Wells Fargo branch in New Mexico, Gonzales deposited the check into Fletcher's account. In July 2013, she made two additional deposits directly into Fletcher's account: a $7,000 check on July 10 and a $500 check on July 11. Both checks also noted "Daniel A. Daniel" on the memo line. C. Daniel made two cash payments to Fletcher toward the quoted $30,000 fee: a $2,000 payment in December 2013 and a $5,000 payment on January 8, 2014.

Fletcher did not obtain Daniel's informed written consent to accept money from Gonzales or from C. Daniel. Instead, Fletcher testified that he did not meet with C. Daniel or propose a $30,000 fee, but represented Daniel on a pro bono basis. He also testified that he never gave C. Daniel his bank account number. Further, while Fletcher stipulated that Gonzales deposited checks totaling $13,500 into his law firm account at Wells Fargo, he maintains that he was unaware that the money had been deposited until after OCTC filed the NDC in this proceeding because his staff handled his law firm bank account.

We adopt the hearing judge's finding that "[Fletcher's] testimony on these issues lacks credibility and that C. Daniel's testimony is credible." (Rules Proc. of State Bar, rule 5.155(A); *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge is best suited to resolve credibility questions].) Fletcher challenges C. Daniel's credibility because he has a felony conviction. The hearing judge specifically found that C. Daniel was credible despite his felony conviction for attempt to manufacture, which occurred 15 years before his testimony, observing that C. Daniel has graduated from college since then and now owns a business. We note that the judge's credibility finding is supported by Gonzales's testimony, the bank records showing that Gonzales deposited checks into Fletcher's account, and Fletcher's own stipulation that he received the funds that Gonzales deposited.[4] Fletcher has never returned these funds.

The superior court docket indicates that Fletcher represented Daniel at an arraignment in Los Angeles Superior Court on December 10, 2013, and at six additional court appearances during January, February, and March 2014. Fletcher stipulated that he substituted out as Daniel's counsel of record at a hearing on March 20, 2014. C. Daniel testified that Daniel asked him to request an accounting of the funds paid to Fletcher for his representation and that he asked for an accounting at several of these court appearances and at the March 20 hearing. Fletcher never provided an accounting.

III. FLETCHER IS CULPABLE ON BOTH COUNTS

A. Accepting Fees for Representation from One Other than Client (Count One)

In Count One, the hearing judge found that Fletcher willfully violated rule 3-310(F) by accepting a total of $20,500 in fees from Gonzales and C. Daniel to represent Daniel without obtaining Daniel's informed written consent. We affirm. The record clearly establishes, as

[4] The hearing judge based his credibility determination on multiple general factors (e.g., witness demeanor, character of testimony, capacity of witness to perceive, recollect, and communicate) without specific supporting facts. This recitation is less helpful than a credibility finding explicitly based on examples of concrete conflicting evidence.

Daniel testified in his deposition,[5] that Fletcher did not obtain Daniel's consent to accept fees from third parties.

First, Fletcher asserts that he did not violate rule 3-310(F) because he represented Daniel on a pro bono basis. We affirm the hearing judge's finding that this assertion is not credible. The fact that Fletcher never returned the funds given to him by Gonzales and C. Daniel is inconsistent with his assertion that his services were pro bono. Alternatively, Fletcher admits that he did not comply with rule 3-310(F), but asserts that it was only a technical violation as Daniel testified that he knew that Gonzales and C. Daniel were paying his fees. However, Daniel's awareness cannot substitute for the informed written consent required by the rule. Fletcher further states that any violation is not willful since he did not know that he had received funds for Daniel's fees because his accountant and office staff handled his bank account. But he is not relieved of his nondelegable responsibility to comply with the rules regarding client funds because someone else manages his bank accounts. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 411-412.)

Lastly, Fletcher argues that rule 3-310(F) requires a member to obtain written consent only where there is also a showing of demonstrated interference with the member's independence or professional judgment and failure to keep client information in confidence, and that OCTC had the burden to prove these additional requirements. This is an inaccurate reading of the rule. Rule 3-310(F) states that a member shall not accept compensation from one other

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[5] In his rebuttal brief on review, Fletcher asserts for the first time that the hearing judge improperly relied on Daniel's deposition testimony. As we noted above, Fletcher did not oppose OCTC's motion to admit the deposition testimony. Further, he cites case law that prohibited the use of testimony from a witness who asserted his Fifth Amendment right against self-incrimination only *on issues covered by that constitutional protection.* (*A & M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566-567.) But Daniel testified during the deposition, without raising the privilege against self-incrimination, about many other things, including the retention of Fletcher and the fees paid to him. Thus, Fletcher had ample opportunity to cross-examine Daniel on these issues at the deposition before the admission of the testimony at trial.

than the client unless *all three* requirements of the rule are met: (1) there is no interference with the member's independence or with the attorney-client relationship; (2) the confidentiality of client information is protected; and (3) informed written consent of the client is obtained. The rule requires the member to ensure that each requirement is met, and Fletcher has not done this.

B. Render Appropriate Accounts (Count Two)

In Count Two, the hearing judge found that Fletcher violated rule 4-100(B)(3) by failing to provide an accounting for the fees that he was paid to represent Daniel. We affirm. The record is clear that Fletcher did not provide the necessary accounting. Fletcher argues that he was not required to do so because he did not receive a request for one from either Daniel or C. Daniel. C. Daniel credibly testified that, at his brother's request, he requested an accounting at several court appearances Fletcher made on Daniel's behalf. Moreover, Fletcher is required to provide the accounting whether or not the client requests it. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.)[6] Even if we were to accept Fletcher's position that he had taken this matter as a pro bono case and was unaware of the funds directly deposited to his account, he was still obligated to account for these funds. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 758, quoting rule 4-100(B)(3) [rule 4-100(B)(3) broadly interpreted to include all funds "coming into the possession of the member"]; *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 211 [duty to account extends to fees paid in excess of those set forth in retainer agreement].)

[6] Fletcher incorrectly asserts that this holding from *Brockway* is dicta. However, as noted, regardless of the *Brockway* holding, the record in this case clearly demonstrates that an accounting was requested.

IV. AGGRAVATION AND MITIGATION[7]

The hearing judge assigned aggravation for Fletcher's prior discipline, "hard to believe" testimony, failure to cooperate, and overreaching and uncharged misconduct, but declined to include aggravation for multiple acts as requested by OCTC. The judge also found that Fletcher did not establish any factors in mitigation. OCTC did not appeal and does not challenge the findings in aggravation and mitigation. Fletcher argues against all the factors in aggravation except for his prior discipline and asserts that he should receive mitigation for 10 years of discipline-free practice since his public reproval and for his pro bono work.

A. Prior Discipline (Std. 1.5(a))

We agree with the hearing judge that aggravation should be assigned for Fletcher's prior discipline. We assign significant weight to it because that prior misconduct was serious and occurred only eight years before the present misconduct. Fletcher was publicly reproved in 2006 for misconduct in two matters with conditions, including 10 hours of anger management counseling, a requirement that he enroll in Ethics School, and that he develop a law practice management plan. In the first case, no. 03-O-02625, Fletcher stipulated to culpability under section 6068, subdivision (b), for failing to maintain the respect due to courts and judicial officers based on nine acts of contempt in a criminal trial, including laughing at the judge and accusing him of racial bias. Fletcher was sentenced to two days in jail and fined $400 for these acts of contempt. In the second case, no. 05-O-04499, Fletcher stipulated to culpability under section 6068, subdivision (b), for arriving late to a trial, refusing to explain his tardiness, and accusing the judge of racial prejudice. The judge ordered sanctions of $1,000 for this behavior.

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[7]Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct requires OCTC to establish aggravating circumstances by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) All further references to standards are to this source. Standard 1.6 requires Fletcher to meet the same burden to prove mitigation.

B. "Hard to Believe" Testimony

The hearing judge assigned "serious" aggravation for "hard to believe" testimony, based on language in *Brockway v. State Bar* (1991) 53 Cal.3d 51, which analyzed aggravation for lack of candor under former standard 1.2(b)(vi). The judge found that "almost all" of Fletcher's testimony was inherently implausible. Unlike the candor finding in *Brockway*, this finding appears to focus on Fletcher's lack of credibility, not his dishonesty. The hearing judge did not make an *express* finding that the testimony lacked candor or was dishonest. Absent such a finding, we decline to assign aggravation for lack of candor. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 67.)

C. Overreaching (Std. 1.5(g)) and Uncharged Misconduct (Std. 1.5(h))

The hearing judge assigned aggravation for both overreaching and an uncharged violation of section 6068, subdivision (f), all based on Fletcher's conduct during his cross-examination of Daniel at his deposition. Specifically, Fletcher questioned Daniel on details related to his underlying criminal matter. However, we cannot find additional aggravation based on the uncharged misconduct because the allegations that Fletcher violated section 6068, subdivision (f), not only do not appear in the NDC, but were not even discussed in OCTC's pretrial statement, during the trial, or in its posttrial brief. Rather, OCTC offered the deposition transcript into evidence without reference to the uncharged misconduct it sought to assert. We cannot use "uncharged misconduct" to surprise a respondent not advised in advance of the charges he faces. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35 [as general rule, attorney may not be disciplined for violation not alleged in NDC]; *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 260 [no uncharged misconduct where OCTC had ample opportunity but did not move to amend NDC to include charges].)

Further, while *Edwards* provides that, under some circumstances, allegations not set forth in the NDC may be considered for other purposes, it requires that they be raised through Fletcher's own testimony and elicited for the relevant purpose of inquiring into the cause of the charged misconduct. (*Edwards v. State Bar*, *supra*, 52 Cal.3d at pp. 35-36.) These requirements are not met here. The challenged behavior is not Fletcher's testimony, but rather his conduct during Daniel's deposition. Nothing that Fletcher said during the deposition was elicited testimony for the relevant purpose of inquiring into his charged misconduct. Thus, it cannot be considered in aggravation.

D. Failure to Cooperate (Std. 1.5(l))

The hearing judge assigned aggravation for Fletcher's failure to cooperate, based on an incident that occurred at trial. During C. Daniel's testimony, Fletcher held up his cell phone and appeared to be recording the testimony. When his behavior caught the judge's attention, the judge admonished Fletcher to put his phone away. In his decision, the judge described Fletcher's behavior as "an attempt to intimidate or harass, or both, the witness" but did not state precisely what conduct he observed that led to this conclusion.

We recognize that the hearing judge's findings of fact are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) However, our independent review of the record indicates no clear and convincing evidence that this incident rises to the level of a failure to cooperate, particularly since Fletcher promptly complied with the judge's admonition and did not engage in other uncooperative conduct. The hearing judge's single admonition did not give Fletcher sufficient notice that his conduct would be considered in aggravation.

E. Multiple Acts (Std. 1.5(b))

We agree with the hearing judge's unchallenged finding that the record does not establish multiple acts of misconduct in aggravation. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 839 [two counts of misconduct arising from one transaction did not constitute multiple acts].)

F. No Mitigation

We agree with the hearing judge's finding that Fletcher failed to prove any mitigating circumstances by clear and convincing evidence. On review, Fletcher requests mitigation for the eight-year period of discipline-free practice between his public reproval and his 2013 misconduct in this case. However, eight years of discipline-free practice *between* discipline cases does not meet the requirements of standard 1.6(a), which allows mitigation for the "absence of any prior record of discipline over many years of practice . . . ." (See *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 417 [six or seven years of unblemished practice insufficient period to consider as substantial mitigation].) Therefore, we decline to assign mitigation on this basis. Fletcher also argues that he should receive mitigation for his pro bono work. However, his evidence is limited to his own testimony that he handled a high-profile case pro bono and that he has "done a lot of cases pro bono." This testimony is not sufficient to establish mitigation by clear and convincing evidence, especially since the hearing judge found Fletcher's assertion that he provided pro bono services to Daniel was not credible. (See *In the Matter of Shalant*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 840 [limited mitigation weight assigned for community service established only by attorney's own testimony].)

V. THIRTY-DAY ACTUAL SUSPENSION IS APPROPRIATE DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession; to preserve public confidence in the profession; and to

maintain high standards for attorneys. (Std. 1.1.) No fixed formula exists for determining the appropriate level of discipline. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.) Ultimately, we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

Our disciplinary analysis begins with the standards, which, although not binding, are entitled to great weight (std. 1.1; *In re Silverton* (2005) 36 Cal.4th 81, 91-92), and should be followed whenever possible (std. 1.1; *In re Young, supra*, 49 Cal.3d at p. 267, fn. 11).

Here, standards 2.2(b) and 2.19 apply, each providing for suspension or reproval for Fletcher's misconduct. In addition, standard 1.8(a) provides that since Fletcher has a prior record of discipline, the sanction in this matter must be greater than the public reproval he received for his prior discipline, unless that discipline was remote in time and the previous misconduct was not sufficiently serious. We affirm the hearing judge's finding that neither of these restrictions applies here. Accordingly, standard 1.8(a) requires that we recommend discipline greater than a public reproval.

Based on his numerous findings in aggravation, the hearing judge recommended a 45-day actual suspension. OCTC asks that we affirm that recommendation or increase it. Fletcher argues that a stayed suspension is appropriate discipline for his misconduct. To determine the proper discipline, we look to cases primarily involving failure to account, and note that a stayed suspension is typically imposed. (*In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128 [six-month stayed suspension for failure to account and failure to communicate, with prior public reproval]; *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387 [two-month stayed suspension for failure to account and failure to notify

client of receipt of funds, with no prior discipline].) However, we have assigned greater discipline in cases that involved misconduct in addition to failure to account and serious aggravation including overreaching and uncharged misconduct. (See *In the Matter of Fonte*, *supra*, 2 Cal. State Bar Ct. Rptr. 752 [60-day actual suspension for failure to render appropriate accounting and failure to avoid adverse interests, with aggravation including overreaching, uncharged misconduct, and indifference, and with substantial mitigation].) Here, we find that discipline including a 30-day actual suspension is appropriate progressive discipline. Given the lack of mitigation and the serious aggravation for Fletcher's prior discipline, which included conditions requiring him to attend Ethics School and develop a law office management plan, an actual suspension at the lowest end of the spectrum recommended by the standards is appropriate.

We deny OCTC's request for a probation condition requiring Fletcher to provide an accounting and refund any unearned fees. As the hearing judge found when denying OCTC's request for restitution, this condition is not appropriate when failure to refund was not charged in the NDC. However, considering Fletcher's violation of rule 4-100 and his abdication of his responsibility to supervise his trust account, we add a probation condition requiring him to attend the State Bar's Client Trust Accounting School.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Matthew Powell Fletcher be suspended from the practice of law for one year, that execution of that suspension be stayed, and that Fletcher be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for the first 30 days of the period of his probation.

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. 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.

6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Fletcher be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar

Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VIII. COSTS

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment

HONN, J.

WE CONCUR:

PURCELL, P. J.

STOVITZ, J.*

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*Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.