STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	Case No. 16-O-11367-LMA
DANE ALLEN BESNEATTE,	DECISION
A Member of the State Bar, No. 87197.	

Introduction[1]

In this contested original, disciplinary proceeding, respondent Dane Allen Besneatte (Respondent) is charged with three counts of misconduct involving a single client matter. During a trial management conference in superior court, Respondent stated that his client was not present in court because Respondent received an email indicating that his client rushed his wife to the hospital. In fact, Respondent never received such email from his client. Respondent is charged with willfully violating sections 6068, subdivision (d) (seeking to mislead a judge), 6106 (moral turpitude – misrepresentation), and 6103 (failing to obey a court order). After thorough consideration, the court finds Respondent culpable of two counts of misconduct and dismisses the third count as duplicative.

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Based on the facts and circumstances, as well as the applicable aggravating and mitigating factors, the court recommends, among other things, that Respondent be suspended for one year, stayed, and placed on probation for one year, subject to a 90-day actual suspension.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a notice of disciplinary charges (NDC) against Respondent on December 22, 2016. Thereafter, Respondent, through counsel Thomas Maas, filed a response to the NDC on February 24, 2017.

On September 18, 2017, this matter was abated pending an Independent Medical Evaluation. This matter was unabated on November 20, 2017.

A two-day trial was held in this matter on April 2, 2018, and April 26, 2018. OCTC was represented by Senior Trial Counsel Erica L.M. Dennings. Respondent represented himself.

The matter was submitted for decision on May 14, 2018, after each party filed a closing brief.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on July 18, 1979, and has been a member of the State Bar of California at all times since that date.

Facts

In July 2011, John Johnson was charged with misdemeanor counts of Vehicle Code sections 23152, subdivisions (a) and (b) and a felony count of Penal Code section 273(a) (child endangerment). Johnson was involved in a car accident while driving under the influence with his six-year-old son in the car. Johnson hired Respondent to represent him sometime prior to September 30, 2011.

Johnson's criminal case was set for trial on August 5, 2012, in Solano County Superior Court. Respondent moved to continue the trial date and the motion was granted. Johnson's trial was continued to October 10, 2012, and the case was assigned to Judge Wendy Getty. The court set a trial management conference (TMC) for October 9, 2012.

Between August 9, 2012 and September 26, 2012, Johnson emailed Respondent at least three times regarding the status of the case and to discuss strategy, but Respondent failed to respond. On September 5, 2012, Johnson emailed Respondent and notified him that Johnson had a mandatory work meeting in Texas from October 8, 2012, to October 12, 2012, and that he hoped that the trial was later in the month. Again, Respondent failed to respond.

On October 3, 2012, Johnson informed Respondent that he was unable to appear in court the week of October 15, 2012, due to work. Respondent sent Johnson an email stating that the trial would be pushed out a least a month because he intended to file a motion to continue Johnson's case. Respondent did not intend for Johnson to be present in court for the TMC because Respondent was involved in another more serious matter that took precedence over Johnson's case. In his email to Johnson, Respondent stated, "I have already informed the DA and I am trying to get a written motion filed today so the judge will know also. There was mention last time of your being there or not however since there was continuance necessary the court was ok with it. You should not have to appear tomorrow either."

On October 8, 2012, Respondent filed a motion to continue Johnson's matter. The basis for Respondent's motion was that he had another "no time waiver" case that conflicted with Johnson's case. On October 8, 2012, Johnson sent Respondent an email inquiring about the status of the motion to continue because Johnson believed that the motion was filed on October 3, 2012, or October 4, 2012. On October 8, 2012, Respondent informed Johnson that the motion would be heard the following day, October 9, 2012. He also stated that the motion to continue

had to be granted. Respondent did not tell Johnson to appear. There was no discussion about Johnson having an emergency.

On October 9, 2012, Respondent appeared in court. When the judge inquired about Johnson's absence, Respondent replied, "Your honor, Mr. Johnson is not here. I got an email from him [sic] his wife, she went into the hospital with some internal bleeding and he sent me a message that he had to rush her to the hospital. So, because I have to ask the Court for a continuance because of my no-time waiver case that's starting, we have a last day of this week, I'm trailing right now, depending on when Judge Garrett finishes a case that has priority."[2] The court continued the matter to October 10, 2012, and ordered Respondent to submit verification from the hospital that Johnson's wife had a medical emergency.

On Friday, October 10, 2012, at 2:03 a.m., Respondent sent Johnson an email in which he stated, "Judge Getty has been giving me grief about you not appearing even though I told her you shouldn't have to make the trip because it was necessary to continue your case. Unfortunately, she continued the case to tomorrow (10.12.12) for further proceedings and resetting and ordered that you be here . . . I guess I should have had you come down Tuesday and not tried to save you the time and expense but, as they say, 'no good deed goes unpunished.'" Respondent acknowledged that due to the late notice, he knew Johnson could not be in court. He suggested to Johnson that the judge might accept a letter about a family emergency as an excuse for not appearing in court. Specifically, Respondent stated, "I just mention this because you have had several emergencies lately and possibly one recently that you could send a letter or other paperwork to show the need for you to stay there rather than come down here." Respondent did not mention that he told the court that Johnson had to rush his wife to the hospital. Nor did

[2] There was no discussion about Johnson having an emergency when Respondent communicated with Respondent the day before the TMC.

Respondent ask Johnson for documentation regarding rushing his wife to the hospital so he could submit it to the court.

On October 10, 2012, Respondent appeared before Judge Getty. Johnson was not present, and Respondent did not provide the verification as directed. The court ordered Johnson to appear on October 12, 2012, and for Respondent to bring proof that Johnson's wife was in the hospital if Johnson did not appear. On October 12, 2012, Johnson did not appear in court, and Respondent failed to provide proof that Johnson's wife had a medical emergency. The court continued the matter to October 16, 2012, for Respondent to produce documents verifying Johnson's wife's emergency.

On October 16, 2012, Respondent failed to appear before Judge Getty. Respondent never produced evidence that Johnson's wife had a medical emergency as the court ordered. There are no emails or other communications indicating that Johnson informed Respondent that his wife had a medical emergency in October 2012.

In 2013, Johnson was arrested and extradited to California from Washington after the court issued a bench warrant. Johnson's trial was held in July 2014 where he was convicted on all counts. Subsequently, the public defender represented Johnson in a motion for new trial, which was denied.

Conclusions

Count One - (§ 6068, subd. (d) [Seeking to Mislead a Judge])

Count Two – (§ 6106 [Moral Turpitude])

OCTC charged Respondent with willfully violating section 6106 by stating to the court that the reason his client was not present at a TMC was because Respondent received an email stating his client rushed his wife to the emergency room. OCTC alleges that Respondent knew this statement was false. OCTC also charged Respondent with willfully violating section 6068,

subdivision (d), based on the same facts alleged in the section 6106 charge. Respondent is culpable of the charged misconduct.

During the superior court TMC, Respondent represented to the court that Johnson was not present in court because Johnson sent Respondent an email indicating that Johnson had to rush his wife to the hospital. Respondent claimed that Johnson's wife had internal bleeding. OCTC clearly and convincingly established that Respondent's representation was false and that Respondent knew his statement was false.

Respondent needed to continue Johnson's trial because Respondent had a conflict. On October 3, 2012, Respondent advised Johnson that he did not need to appear at the October 9, 2012 TMC because Respondent intended to file a motion for a continuance based on Respondent's conflict. The day before the TMC, Respondent and Johnson communicated by email where Respondent indicated that the superior court would hear the motion to continue the following day, October 9, 2012. Johnson never indicated that his wife had an emergency. Respondent did not have Johnson appear in court because Respondent had another case that he believed took precedence and Respondent needed a continuance. Respondent made the false representation to conceal that he suggested to Johnson that he did not need to be present in court.

After Respondent made his false representation to the court, Judge Getty ordered Respondent to provide verification about Johnson's wife's emergency. Even though Respondent communicated with Johnson by email after the TMC, Respondent never requested from Johnson corroborating support of Johnson's wife's alleged emergency, and Respondent never even mentioned the emergency. Instead, Respondent suggested to Johnson that Judge Getty might accept a family emergency as an excuse for Johnson's failure to appear in court on October 9, 2012. Respondent mentioned the "several emergencies" Johnson "experienced lately" but never brought up the most recent emergency of Johnson's wife's alleged internal bleeding. The

evidence clearly and convincingly demonstrates that Respondent's statement to the superior court was false, and he knew it was false. Respondent is culpable of willfully violating section 6106 by knowingly making a false representation to the superior court. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786 ["acts of moral turpitude include an attorney's false or misleading statements to a court or tribunal"].)

During the disciplinary hearing, Respondent testified that he did receive an email from Johnson indicating that he had to rush his wife to the hospital. The court does not find Respondent's testimony credible. Respondent failed to provide the alleged email about the emergency or any other communication indicating Johnson's wife went to the hospital. Moreover, Respondent never mentioned the emergency in any subsequent email communications with Johnson.

In addition to willfully violating section 6106, Respondent's false representation to the superior court also violated section 6068, subdivision (d). The Supreme Court has explained that whether an attorney has violated section 6068, subdivision (d), "depends first upon whether his representation to the . . . court was in fact untrue, and secondly, whether he knew that his statement was false and he intended thereby to deceive the court." (*Vickers v. State Bar* (1948) 32 Cal.2d 247, 252-253; accord, *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174.) Although Respondent's misconduct also violated section 6068, subdivision (d), this charge is dismissed as duplicative of the section 6106 charge because the same misconduct underlies both violations. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787 [dismissal of § 6068, subd. (d), charge proper where underlying misconduct covered by § 6106 charge supporting identical or greater discipline].) Count One is dismissed with prejudice.

Count Three - (§ 6103 [Failure to Obey a Court Order])

Respondent is charged with willfully violating section 6103 by failing to comply with the court's October 9, 2012, October 10, 2012, and October 12, 2012 orders to provide documentation verifying Johnson's failures to appear. Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. Respondent is culpable of the misconduct alleged in Count Three.

To establish a willful violation of section 6103, an attorney must know that a final, binding court order exists. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787 [attorney's knowledge of a final, binding order is essential element of a § 6103 violation].) "For Respondent to be disciplined under this law, we hold that the State Bar must prove two elements by clear and convincing evidence: 1) that respondent wilfully disobeyed an order of the court; and 2) that the court order required respondent to do or forbear an act in connection with or in the course of respondent's profession which he ought in good faith to have done or not done." (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603.) During hearings on October 9, 2012, October 10, 2012, and October 12, 2012, the superior court ordered Respondent to provide proof that Johnson's wife had a medical emergency preventing Johnson from appearing in court. Respondent was present when the court issued those orders, yet Respondent failed to provide the documentation. There is no credible evidence that Respondent even requested from Johnson the required proof of Johnson's wife's medical emergency. As such, Respondent is culpable of willfully violating section 6103 for failing to comply with the court's October 9, 2012, October 10, 2012, and October 12, 2012 orders.

Aggravation[3]

The State Bar must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds three aggravating circumstances.

Prior Record of Discipline (Std. 1.5(a).)

Respondent has one prior record of discipline. Pursuant to an order of the State Bar Court, effective August 25, 1993, Respondent was publicly reproved and placed on probation for two years with conditions. In a default proceeding, Respondent was found culpable of willfully violating section 6068, subdivision (m), by failing to respond to his client's reasonable status inquiries and by failing to inform his client that he failed to remove a mechanics lien from her home. Respondent was also found culpable of willfully violating rule 3-110(A) by recklessly and repeatedly failing to take material action to proceed with his clients' civil case. Respondent's misconduct was aggravated by significant client harm, indifference, and failing to cooperate in his disciplinary proceeding. Respondent's misconduct was mitigated by more than 10 years of discipline-free practice. The court affords moderate weight to Respondent's prior because although it was serious, it occurred almost 20 years prior to the misconduct in this case. (*In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96 [private reproval more than 20 years earlier for improperly stopping payment on check to another law firm was too remote in time to merit significant weight].)

Multiple Acts (Std. 1.5(b).)

Respondent is culpable of making a misrepresentation to the superior court and failing to obey three court orders. The court affords moderate weight for Respondent's multiple acts because although Respondent failed to comply with three superior court orders, the orders were

[3] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

all regarding verification to prove Johnson's wife's alleged emergency and were violated within an eight-day period.

Indifference Toward Rectification/Atonement (Std. 1.5(k).)

Respondent fails to appreciate the wrongfulness of his misconduct. During these proceedings, when Respondent was asked about the court orders to provide proof about Johnson's wife's emergency, Respondent stated, "That's not me, it's on him." Despite the court orders directing Respondent to provide verification, Respondent maintains that Johnson was required to provide proof of his wife's hospitalization, and that he was "not obligated to get it." Respondent's attitude reveals a lack of understanding of his ethical responsibilities as an attorney. Moreover, instead of recognizing his misconduct, Respondent maligns Johnson's character by referring to him as a "**DOCUMENTED PERJURER, CONVICTED FELON . . . ABSCONDER FROM JUSTICE, [AND] REPEAT AND MULTIPLE DUI OFFENDER**." Respondent also maintains that "the state bar prosecutor" is "unethical and dishonest" and that this court is "biased and prejudiced." Respondent's blame of others for his own ethical shortcomings demonstrates he is unwilling or unable to acknowledge or appreciate the true nature of his conduct. Significant weight is assigned to Respondent's lack of insight because it makes him an ongoing danger to the public and legal profession. (*In the Matter of Layton* (Review Dept.1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight causes concern attorney will repeat misconduct].)

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) Respondent has presented no evidence of mitigation, and the court finds no mitigating factors based on the record.

Discussion

OCTC argues that a 60-day actual suspension is the appropriate level of discipline for Respondent's misconduct. Respondent did not provide a disciplinary recommendation because he maintains that he is not culpable of any wrongdoing.

Our discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].) Standards 1.8(a), 2.11 and 2.12(a) are the most apt.

Standard 1.8(a) states that when a member has a single prior record of discipline, the "sanction must be greater than the previously imposed sanction," subject to certain exceptions that are not applicable here. Standard 2.11 provides that, "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude . . . or concealment of a material fact. . . . The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law." Standard 2.12 also calls for "disbarment or actual suspension" for disobedience of a court order related to an attorney's practice of law.

Respondent's misconduct was serious. An attorney's dishonesty violates '"the fundamental rules of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice.'" (*Alkow v. State Bar* (1952) 38 Cal.2d 257, 264, quoting *Tatlow v. State Bar* (1936) 5 Cal.2d 520, 524.) "It is the endeavor to secure an advantage by means of falsity which is denounced." (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 145.) Respondent's misconduct was central to the practice of law, and although the

superior court was not meaningfully misled by Respondent's intentional misrepresentation, Respondent's conduct undermines the courts' ability to rely on the accuracy of counsel's statements, impacts the timely administration of justice, and diminishes the public's confidence in the integrity of the legal profession. As such, a period of actual suspension is appropriate.

To determine the appropriate level of discipline within the range provided, comparable case law is also considered. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.) The court finds guidance from two cases – *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862 and *Bach v. State Bar* (1987) 43 Cal.3d 848.

In *In the Matter of Respondent Y, supra*, 3 Cal. State Bar Ct. Rptr. 862, the attorney received a private reproval with conditions for violating section 6103 because he did not obey a court order to pay sanctions imposed as a result of his bad faith tactics and actions while defending a civil action. In addition, the attorney violated section 6068, subdivision (o)(3), by failing to timely report the sanctions to the State Bar. The attorney had no prior disciplinary record and there was no evidence in aggravation. In determining the degree of discipline to impose, the Review Department did not apply former standard 2.6(a), but instead focused on "the narrow violation before [it]." (*Id.* at p. 869.)

In *Bach v. State Bar, supra*, 43 Cal.3d 848, Bach intentionally misled a judge. He informed the judge that he had not been ordered to produce his client at a child custody mediation, or in the alternative that he had not been served with such an order. However, the evidence showed that Bach was informed of the order both orally and in writing. The Supreme Court found that this conduct was serious, involved moral turpitude and was the kind of behavior "that threatens the public and undermines its confidence in the legal profession." (*Id.* at p. 857.) In ordering a one-year stayed suspension, with a three-year probation and 60 days' actual suspension, the court noted there was no mitigation evidence. (*Ibid.*) Moreover, the attorney in

Bach had previously been publicly reproved for communicating with an adverse party represented by counsel.

Far from considering the present misconduct as a "narrow violation" as in *Respondent Y*, this case involves disobedience of three court orders and intentionally misleading a judge. Unlike the attorney in *Respondent Y,* Respondent lacks insight into the nature of his wrongdoing, and he has a prior record of discipline. Moreover, there were no aggravating factors present in *Respondent Y.* Respondent's misconduct warrants greater discipline than the discipline in *Respondent Y.*

Respondent's case is more similar to the misconduct in *Bach.* Respondent and the attorney in *Bach* have one prior discipline record, lack insight into their wrongdoing and no mitigating factors. As in *Bach*, Respondent's misconduct warrants progressive discipline as outlined in standard 1.8(a). Although similar, Respondent's wrongdoing is more serious than the misconduct in *Bach.* Respondent is also culpable of willfully failing to obey three court orders. "Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney." (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.) Thus, Respondent's misconduct warrants a greater period of actual suspension than in *Bach.*

In light of Respondent's prior public reproval, aggravating circumstances that include lack of insight, and lack of mitigation, the court concludes that a 90-day period of actual suspension is appropriate to protect the public, the courts and the legal profession; to maintain high professional standards; and to preserve public confidence in the legal profession. (Std. 1.1.)

RECOMMENDATIONS

Discipline – Actual Suspension

It is recommended that Dane Allen Besneatte, State Bar Number 87197, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that Respondent be placed on probation for one year with the following conditions.

Probation Conditions and Other Requirements

Conditions of Probation

1. Actual Suspension

Respondent must be suspended from the practice of law for the first 90 days of the period of Respondent's probation.

2. Review Rules of Professional Conduct

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

4. Maintain Valid Official Membership Address and Other Required Contact Information

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer

Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

5. Meet and Cooperate with Office of Probation

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

6. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court

During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. **Quarterly and Final Reports**

a. Deadlines for Reports. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after

either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. State Bar Ethics School

Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this Decision but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

9. Proof of Compliance with Rule 9.20 Obligations

For a minimum of one year after the effective date of discipline, Respondent is directed to maintain proof of Respondent's compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include the names and addresses of all individuals and entities to which notification was sent pursuant to rule 9.20; copies of the notification letter sent to each such intended recipient; the original receipt and tracking information provided by the postal authority for each such notification; and the originals of all returned receipts and notifications of non-delivery. Respondent is required to present such proof upon request by the Office of Chief Trial Counsel, the Office of Probation, and/or the State Bar Court.

10. Commencement of Probation/Compliance with Probation Conditions

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 probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Other Requirements (Not Conditions of Probation)

1. Multistate Professional Responsibility Examination Within One Year

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this Decision but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

2. California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[4] Failure to do so may result in disbarment or suspension.

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[4] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32

3. Costs

It is further recommended 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Dated: July 18, 2018

LUCY ARMENDARIZ
Judge of the State Bar Court

Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. *(Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 18, 2018, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DANE ALLEN BESNEATTE
328 E "A" ST
DIXON, CA 95620 - 3535

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Erica L. M. Dennings, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 18, 2018.

Vincent Au
Court Specialist
State Bar Court