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STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 16-O-17243-YDR
	)	
EDMOND ELIAS SALEM,	)	DECISION
	)	
A Member of the State Bar, No. 228274.	)	
	)	

Introduction[1]

In this disciplinary proceeding, Edmond Elias Salem (Respondent) is charged with four counts of moral turpitude in a single client matter. The moral turpitude charges include two counts of concealing a material fact from opposing counsel and two counts of simulating a client's signature on two different settlement agreements. The court finds, by clear and convincing evidence, that Respondent is culpable of the charged misconduct. In light of Respondent's misconduct, as well as the aggravating and mitigating circumstances, the court recommends that Respondent, among other things, be actually suspended for 90 days.

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) on April 20, 2018. Respondent filed a response on May 15, 2018. On August 6, 2018, the parties filed a stipulation as to facts

[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.

and admission of documents (Stipulation). On August 21, 2018, the parties filed a brief supplemental to the Stipulation.

Trial took place August 21 and 29, 2018. OCTC was represented by Senior Trial Counsel Eli Morgenstern, and Respondent was represented by Ellen A. Pansky of Pansky Markle Attorneys at Law. The parties filed their closing briefs on September 12, 2018, and the court took this matter under submission that same day.[2]

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 2, 2003, and has been a member of the State Bar of California at all times since that date.[3]

The following findings of fact are based on the Stipulation and the documentary and testimonial evidence admitted at trial.

Case No. 16-O-17243 – The Bud Bednarski Matter

Facts

At all relevant times at issue, Bud Bednarski (Bednarski) maintained an automobile liability insurance policy with Mercury Insurance Company (Mercury) that contained uninsured motorist coverage with limits of $100,000 per person and $300,000 per accident.

On January 30, 2009, Bednarski was involved in an automobile accident with a semi-truck. The driver of the semi-truck fled the scene of the accident. Bednarski incurred medical bills of $8,005 as a result of the accident and Mercury made medical coverage payments to Bednarski totaling $4,860.

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[2] On August 16, 2018, Respondent filed a motion requesting that the court take judicial notice of Respondent's Exhibits 1032 and 1033. At trial, the court took judicial notice of Exhibit 1033 and took under submission the issue of whether or not to take judicial notice of Exhibit 1032. While Exhibit 1032 is of limited value, Respondent's request that the court take judicial notice of that exhibit is hereby granted.

[3] In addition, Respondent was admitted to practice law in Illinois in May 2000.

On February 7, 2009, Bednarski employed Respondent to represent him in all claims arising out of the January 30, 2009 automobile accident. Respondent's fee agreement with Bednarski included a paragraph regarding power of attorney, which stated the following:

> "Client hereby gives to Attorney Client's power of attorney to execute all documents connected with the claim for the prosecution of which Attorney is retained, including . . . settlement agreements, compromises, releases . . . settlement drafts, and all other documents and instruments that Client could properly execute."

(Exh. 3, p. 3.)

On or about February 7, 2009, Respondent presented a claim for uninsured motorist coverage benefits to Mercury (UM Claim). On March 25, 2009, Respondent wrote to Mercury stating his intent to pursue arbitration if a mutually acceptable resolution could not be reached. (Exh. 1002.)

On May 3, 2010, Mercury denied coverage for Bednarski's UM Claim. And on June 11, 2010, Mercury demanded arbitration with regard to the UM Claim.

On February 16, 2012, separate from the UM Claim, Respondent filed a complaint in the Los Angeles County Superior Court on behalf of Bednarski against Mercury. The complaint alleged breach of contract, breach of the implied covenant of good faith and fair dealing, misrepresentation, and infliction of emotional distress (the Bad Faith Claim). (Exh. 5.)

On May 5, 2012, Bednarski passed away. At that time, Respondent was not aware of Bednarski's passing.

A few months later, on July 18, 2012, Maurice Valenzuela (Valenzuela), a Litigation Specialist employed by Mercury, had a telephone conversation with Respondent during which Valenzuela, on behalf of Mercury, offered the total sum of $42,500 in settlement of Bednarski's

uninsured motorist claim. That same day, Respondent, on behalf of Bednarski, accepted Mercury's offer.[4]

On July 19, 2012, Perry Forrester, Esq. (Forrester), Mercury's attorney, mailed Respondent a cover letter and a Release and Trust Agreement (UM Release), in connection with Bednarski's UM Claim. In his cover letter, Forrester wrote, in part, "Please have your client sign and date the [UM Release] and return it to this office." (Exh. 9.)

On July 24, 2012, Respondent signed Bednarski's name on the UM Release, and returned the UM Release to Forrester, who received it. (Exh. 10.) Just above where Respondent signed Bednarski's name, the UM Release stated, in bold and all caps, **"I HAVE READ THIS RELEASE AND FULLY UNDERSTAND IT."** (Exh. 10, p. 2.) Respondent did not inform Forrester, Valenzuela, or any other Mercury employee that he had simulated Bednarski's name on the UM Release. Respondent also made no indication that he had signed the document under a power of attorney.[5]

In July 2012, pursuant to the settlement of Bednarski's uninsured motorist claim, Mercury tendered a check in the amount of $42,500 made payable to Respondent and Bednarski. Thereafter, Respondent signed Bednarski's name on the check and deposited it in his client trust account (CTA). (Exhs. 8 and 11.)

In or about late August or early September 2012, Ronald F. Dupless (Dupless), the executor of Bednarski's estate, informed Respondent telephonically that Bednarski had passed away on May 5, 2012.

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[4] Respondent had previously obtained authority from Bednarski to enter into a global settlement in the range of $25,000 to $40,000. (Exh. 1004.)

[5] At trial, OCTC argued that Respondent attempted to duplicate Bednarski's actual signature on the UM Release. Comparing Exhibit 3, p. 5, with Exhibit 10, p. 3, it appears this assertion may be true. However, with the absence of any expert testimony on this subject, the court finds that it has not been established by clear and convincing evidence that Respondent attempted to duplicate Bednarski's actual signature on the UM Release.

Although Bednarski was deceased at the time Respondent signed Bednarski's name to the UM Release, Respondent believed he did not have to disclose this fact to Mercury before disbursing the UM Claim settlement proceeds. Respondent acknowledged at trial that his failure to research this issue, among other issues, was a mistake.

On September 20, 2012, Respondent mailed Dupless a check that Respondent issued from his CTA in the amount of $20,631.48, which represented Bednarski's share of his UM Claim settlement. (Exhs. 12 and 14.) Respondent also mailed Dupless a distribution of the settlement funds from the UM Claim.

Respondent disbursed the proceeds from the $42,500 settlement as follows:

Attorney's Fee (40%):	$ 17,000
Expenses Advanced:	$ 4,868.52
Total Attorney's Fees/Expenses	$ 20,868.52
Balance To Client:	$ 20,631.48

(Exh. 13.)

On September 28, 2012, Dupless returned the settlement distribution to Respondent which contained the executor's signature on it affirming his approval of the distribution.[6] (Exh. 15.) Dupless signed the Settlement Distribution sheet with his own name and clearly indicated that he was signing on behalf of Bednarski, as the executor.

On or about January 10, 2013, Tod Castronovo (Castronovo), Mercury's attorney with respect to the Bad Faith Claim, wrote a letter to Respondent. In this letter, Castronovo stated, in part:

> As discussed, in view of the fact that settlement negotiations are at an impasse I would request that you arrange to have your client respond to the outstanding written discovery served back in September, 2012. .... Unless responses to the outstanding written discovery are received within 15 days without objection I will have no alternative but to move the court for an order to compel.

(Exh. 19.)

[6] The court notes that Dupless signed his own name on the Settlement Distribution sheet and clearly indicated that he was signing on behalf of Bednarski, as the executor.

Respondent did not provide the requested discovery responses to Castronovo, nor did he inform Castronovo that his client would be unable to provide the requested discovery responses. Instead, on January 23, 2013, Respondent had a telephone conversation with Castronovo during which an agreement to settle the Bad Faith Claim was reached for the total amount of $10,000. Respondent did not inform Castronovo, or any other Mercury employee, that Bednarski had been deceased for nearly nine months.

On January 28, 2013, Castronovo, on behalf of Mercury, mailed Respondent a letter which enclosed the Full and Final Release of All Claims (Bad Faith Release) for execution. The Bad Faith Release stated, in part, "Releasor warrants that he has read the entirety of this Release, fully understands this Release, and that he is of legal age, legally competent and authorized to execute the Release and accept full responsibility therefore." (Exh. 22, p. 2.)

In January 2013, pursuant to the settlement of the Bad Faith Claim, Mercury tendered a settlement check in the amount of $10,000 made payable to Respondent and Bednarski. (Exh. 20.) Thereafter, Respondent signed Bednarski's name on the check and deposited the check into his CTA. (Exhs. 20 & 23.)

On February 8, 2013, Respondent signed Bednarski's name on the Bad Faith Release (Exh. 22) and returned the Bad Faith Release to Castronovo, who received it. Respondent did not inform Castronovo or any other Mercury employee that he signed Bednarski's name on the release. Respondent also did not indicate that he was signing on Bednarski's behalf through power of attorney.

On May 19, 2014, Castronovo mailed Respondent a letter informing him that Mercury had discovered that Bednarski had passed away on May 5, 2012, and demanded that Respondent return the aggregate amount of $52,500 that Mercury had tendered to Respondent in settlement of Bednarski's UM Claim and Bad Faith Claim. (Exh. 24.) Respondent received the letter and

responded to Castronovo by letter dated July 24, 2014, informing him that Respondent had referred the matter to his professional liability insurance carrier and requesting that further communications regarding the matter should be directed to Respondent's professional liability carrier.

On October 23, 2014, Mercury filed a complaint against Respondent alleging five causes of action for: (i) Rescission and Restitution; (ii) Money Had and Received; (iii) Fraud and Concealment; (iv) Conversion; and (v) Breach of Warranty and Authority (the Mercury Claim). (Exh. 25.) On March 30, 2017, Respondent and Mercury agreed to resolve Mercury's claim against Respondent for $21,250. (Exh. 26.) Mercury incurred nearly $35,000 in attorney fees and two-and-a-half years in litigation on the Mercury Claim.

Conclusions of Law

Count One – § 6106 [Moral Turpitude – Concealing Material Fact]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The concealment of material facts is just as misleading as explicit false statements. (See *Lewis v. State Bar* (1973) 9 Cal.3d 704, 713 [attorney's concealment of material facts designed to mislead others is no less serious than affirmative deceptive statements].) Gross negligence in creating a false impression is sufficient for a violation of section 6106. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90-91.)

OCTC alleged that Respondent violated section 6106 by knowingly or with gross negligence: (1) "concealing" Bednarski's death from Mercury; and (2) disbursing the UM Claim settlement funds after learning of Bednarski's death. Timing and intent are key in analyzing culpability with respect to Count One. By July 18, 2012, Respondent had reached a settlement in principle with Mercury regarding Bednarski's UM Claim. Mercury's attorney memorialized the

terms and conditions of the UM Claim settlement in the UM Release, which was mailed to Respondent on July 19, 2018. Respondent, after improperly signing his client's name on the UM Release, subsequently learned – in late August or early September 2012 – that Bednarski had passed away in May 2012. When Respondent settled the UM Claim and executed the UM Release, he did not know that his client had passed. Accordingly, Respondent did not initially conceal Bednarski's death from Mercury.

That being said, the court also considers OCTC's allegation that Respondent committed moral turpitude by going ahead and disbursing the UM Claim settlement funds after discovering Bednarski had died before the UM Claim was settled by the parties. The UM Claim settlement was not valid at the time it was entered because Bednarski had died and could not enter into a settlement. Moreover, a portion of the UM Claim settlement was for pain and suffering – a cause of action that is not available to a deceased plaintiff.[7]

Accordingly, Respondent should have been forthcoming with Mercury when he learned that the UM settlement occurred after Bednarski's death. Respondent's mistaken impression that he did not have to disclose the fact that his client died before disbursing the settlement proceeds was in error – a fact Respondent would have discovered if he had researched the issue. Therefore, by failing to reveal his client's death to Mercury and instead choosing to disburse the UM Claim settlement funds, Respondent, through gross negligence, committed an act of moral turpitude, in willful violation of section 6106.

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[7] "A cause of action that survives the death of a person passes to the decedent's successor in interest and is enforceable by the 'decedent's personal representative or, if none, by the decedent's successor in interest.' (Code Civ. Proc., § 377.30.) In the typical survivor action, the damages recoverable by a personal representative or successor in interest on a decedent's cause of action are limited by statute to "the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and *do not* include damages for pain, suffering, or disfigurement.' (Code Civ. Proc., § 377.34, italics added.)" (*Quiroz v. Seventh Avenue Center* (2006) 140 Cal.App.4th 1256, 1264-1265.)

Count Two – § 6106 [Moral Turpitude – Misrepresentation]

In Count Two, OCTC alleged that Respondent committed misconduct constituting moral turpitude by simulating his client's signature on the UM Release and causing Mercury to believe that the signature actually came from Bednarski. The court agrees. Here, both the UM Release and Mercury's cover letter made it clear that Mercury was seeking Respondent's client's signature on the UM Release. It is unclear how an attorney – especially one that has been practicing personal injury law for a significant amount of time, such as Respondent – could believe that a power of attorney gave him the authority to effectively forge his client's name on a release. Even if the court accepts Respondent's assertion that he truly believed he could clandestinely simulate his client's signature on a release without disclosing that his client did not sign or even read the document, such a belief was unreasonable and would amount to a willful blindness toward Respondent's professional obligations and the law. (*In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427, 433 [committing misconduct constituting moral turpitude through willful blindness is equivalent to having knowledge – and does not constitute gross negligence].)

Accordingly, the court concludes that Respondent willfully and intentionally violated section 6106 by simulating his client's signature in the UM release and presenting it to Mercury as a genuine signature.

Count Three – § 6106 [Moral Turpitude – Concealing Material Fact]

In Count Three, OCTC alleged that Respondent concealed a material fact from opposing counsel in willful violation of section 6106 by knowingly or with gross negligence settling Bednarski's Bad Faith Claim without disclosing Bednarski's death to opposing counsel. The court agrees.

When a client dies, the attorney-client relationship generally terminates by operation of law. (*Pham v. Wagner Litch Machinery Co.* (1985) 172 Cal.App.3d 966, 972.) Respondent was fully aware of Bednarski's death at the time he continued to litigate and ultimately settle the Bad Faith claim. While Respondent asserts that he believed he could continue to represent his deceased client, Respondent did not have a good faith basis for this belief and effectively turned a blind eye to this issue by choosing not to research or otherwise look into the issue.

Accordingly, Respondent intentionally committed an act of moral turpitude, in willful violation of section 6106, by settling the Bad Faith Claim without disclosing to the opposing party that his client was deceased.

Count Four – § 6106 [Moral Turpitude – Misrepresentation]

Similar to Count Two, Respondent willfully and intentionally violated section 6106 by simulating his client's signature in the Bad Faith Release and presenting it to Mercury as a genuine signature.

Aggravation[8]

OCTC bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.)

Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)

Respondent has been found culpable of multiple acts of misconduct. Respondent's multiple acts of misconduct warrant significant consideration in aggravation.

Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j).)

Respondent's misconduct resulted in significant harm to Mercury. When confronted with the fact that Mercury had learned that Respondent's client was deceased at the time the UM Release and Bad Faith Release were signed, Respondent referred them to his malpractice carrier.

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

Ultimately, Mercury incurred nearly $35,000 in attorney fees and two-and-a-half years in litigation pursuing the Mercury Claim. The significant harm Respondent caused Mercury warrants substantial consideration in aggravation.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)

No Prior Record of Discipline (Std. 1.6(a).)

Prior to the misconduct charged in this matter, Respondent practiced law for over 8 years in California with no prior record of discipline. Prior to that, Respondent was admitted to practice law in the State of Illinois in May 2000, and also has no prior record of discipline in that State.[9] Accordingly, the court assigns significant weight to Respondent's lack of a prior record of discipline. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant weight].)

Cooperation with OCTC (Std. 1.6(e).)

Respondent entered into an extensive stipulation regarding facts and the admissibility of evidence. Respondent's cooperation preserved court time and resources and warrants significant mitigation credit.

Good Character (Std. 1.6(f).)

Respondent presented evidence of good moral character from thirteen character witnesses.[10] Respondent's character witnesses represent a wide range of professions, including: an owner of a dance studio, a principal of a middle school, a teacher, a former client, a bishop, and six attorneys. All of the character witness indicated they understood the charges against

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[9] The parties stipulated to this fact.

[10] Two of Respondent's character witnesses testified at trial. The others wrote declarations on his behalf.

Respondent and generally stated they believe him to be empathetic toward his clients, honest, of good moral character, and possessing high integrity. The court affords Respondent significant mitigation credit for his good character evidence. (See *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [significant consideration given to testimony of attorneys and judges due to their "strong interest in maintaining the honest administration of justice"].)

Community Service and Pro Bono Activities

Several of Respondent's character witnesses discussed legal services Respondent has provided on a pro bono basis. The court affords Respondent significant mitigation credit for his pro bono activities.

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. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.)

In determining the 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 decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. And, if two or more acts of professional misconduct are found in a single disciplinary

proceeding, the sanction imposed will be the most severe of the applicable sanctions. (Std. 1.7(a).)

In this case, standard 2.11 provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in a talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

OCTC urges that Respondent, among other things, be actually suspended for a period of one year.[11] Respondent, on the other hand, asserts that the charges should be dismissed. The court looked to the case law and found some guidance in *Hallinan v. State Bar* (1948) 33 Cal.2d 246.

In *Hallinan*, the attorney simulated his client's signature on a settlement release, dismissals, and check although he knew that defense counsel wanted the client's personal signature on the release and dismissals. The simulated signature was acknowledged by a notary as if the client had personally appeared before the notary. Respondent believed he had legal power and authority to sign the client's name to the documents pursuant to a power of attorney but simulated the signatures to give defense counsel the impression that the client had personally signed them. The Supreme Court found that although the attorney was legally authorized to

[11] As acknowledged by OCTC, it recommended a 90-day period of actual suspension in its pretrial statement.

execute the settlement documents the way he had, it was the attorney's deception in leading opposing counsel to believe that the client had personally signed the settlement documents that the Court found objectionable. The attorney was actually suspended for three months.

While *Hallinan* was written nearly 70 years ago, many of the facts found in Hallinan mirror the present case. Similar to the attorney in *Hallinan*, Respondent intentionally misled opposing counsel to believe that the UM Release and Bad Faith Release were signed by his client. One distinguishing factor in *Hallinan* is that the attorney had the simulated signatures of his client notarized to give further validation to the misrepresentation that the client's signatures were authentic. The present case, however, has a distinguishing factor of its own, which is the fact that Respondent, knowing that his client had been deceased for nine months, continued with litigation in the Bad Faith Matter as if his client were still alive. Accordingly, the court finds the present matter to be somewhat on par with *Hallinan*.

Therefore, having considered the nature and extent of the misconduct, the aggravating and mitigating circumstances, as well as the case law, the court finds that, among other things, a 90-day period of actual suspension is appropriate.

Recommendations

It is recommended that Edmond Elias Salem, State Bar Number 228274, 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 two years with the following conditions:

Conditions of Probation

1. **Actual Suspension**

Respondent must be suspended from the practice of law for the first 90 days 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 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 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

Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of 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 whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

Commencement of Probation

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 the conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

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 requirement.

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.[12] Failure to do so may result in disbarment or suspension.

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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: December 11, 2018

YVETTE D. ROLAND
Judge of the State Bar Court

[12] 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 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 Los Angeles, on December 11, 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 Los Angeles, California, addressed as follows:

ELLEN ANNE PANSKY
PANSKY MARKLE ATTORNEYS AT LAW
1010 SYCAMORE AVE UNIT 308
S PASADENA, CA 91030 - 6139

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 11, 2018.

Elizabeth Alvarez
Court Specialist
State Bar Court