PUBLIC MATTER

FILED

FEB 14 2019

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No. 18-C-12888-CV
	)	
RAFAEL MAZO AMEZAGA, JR.,	)	DECISION
	)	
A Member of the State Bar, No. 198609.	)	
	)	

Introduction

This conviction referral matter is based on respondent Rafael Mazo Amezaga, Jr.'s[1] (Respondent) misdemeanor conviction of Vehicle Code section 23152, subdivision (b) [Driving While Having a 0.08% or Higher Blood Alcohol], and Vehicle Code section 23152, subdivision (b) [Driving While Having a 0.08% or Higher Blood Alcohol] with enhancements of having a blood alcohol content of 0.15% or higher pursuant to Vehicle Code section 23578 and a prior conviction within the last 10 years pursuant to Vehicle Code section 23540.

Upon finality of the conviction, the review department issued an order referring this matter to the hearing department for a hearing and decision on the issue of whether the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct

[1] Respondent is also known as Rafael Mazo Amezaga II and Rafael Mazo Amezaga.

warranting discipline and, if so, for a recommendation as to the discipline to be imposed. (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 5.340, et seq.)

Based on clear and convincing evidence, this court finds that the facts and circumstances surrounding Respondent's misdemeanor conviction did not involve moral turpitude but did involve other misconduct warranting discipline. Accordingly, the court recommends that Respondent be suspended from the practice of law in California for one year, that execution of suspension be stayed, and that he be placed on probation for two years.

Significant Procedural History

On August 2, 2018, the review department referred this matter to the hearing department for a hearing and decision recommending the discipline to be imposed.

On August 7, 2018, this court filed and served on Respondent a Notice of Hearing on Conviction (NOH). (Rules Proc. of State Bar, rule 5.345(A).) On August 30, 2018, Respondent filed his response to the NOH.

On November 15, 2018, the matter proceeded to trial. On the same date, the parties filed a stipulation as to facts and admission of documents. The court took the matter under submission for decision at the conclusion of trial on November 15, 2018. Thereafter, closing briefs were filed by the parties.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on November 7, 1998, and has been a member of the State Bar of California since that time.

The following findings of fact are based on the stipulation as to facts and documentary and testimonial evidence admitted at trial.

Facts

Background

Between January 1, 2000, and January 2013, Respondent was employed by the Santa Barbara County Public Defender's Office where he handled hundreds of DUI cases, and up to a dozen such cases involving serious bodily harm and/or death. After his tenure at the public defender's office, Respondent began a solo practice with a primary focus on tax, estate planning and criminal law.

Beginning sometime in 2012 and continuing to the present day, Respondent has been the primary caretaker for his 84-year-old mother who has been, and is, in poor health. On December 5, 2012, Respondent's 80-year-old father died after a battle with cancer. He was very close to his father –a tax consultant and real estate broker - as they worked together in the same office on a daily basis for a substantial number of years.

First DUI Incident - September 17, 2014

On Wednesday, September 17, 2014, at 10:55 p.m., Respondent was driving his vehicle in excess of 85 mph in an area zoned for 65 mph on US-101 when he passed an officer employed by the California Highway Patrol (CHP). The CHP arrested Respondent for driving under the influence of alcohol based upon his unsafe driving, objective indications of alcohol intoxication, and poor performance on his Field Sobriety Tests. Respondent declined the Preliminary Alcohol Screening Test. Respondent's breath test results were 0.21% and 0.20% alcohol – 2.5 times the legal limit.

During the arrest, Respondent denied drinking alcohol four times in response to being questioned by officers about his alcohol consumption that evening. Yet the officer performing the field sobriety tests stopped the tests twice because Respondent was so intoxicated as to present a danger to himself.

On September 29, 2014, the district attorney filed a misdemeanor complaint against Respondent alleging violations of Vehicle Code section 23152, subdivision (a) [Driving Under the Influence of Alcohol], a misdemeanor, and Vehicle Code section 23152, subdivision (b) [Driving While Having a 0.08% or Higher Blood Alcohol], a misdemeanor, with the enhancement for having a blood alcohol content of 0.15% or higher pursuant to Vehicle Code section 23578.

On October 30, 2014, Respondent pled guilty to a misdemeanor violation of Vehicle Code section 23152, subdivision (b) [Driving While Having a 0.08% or Higher Blood Alcohol].[2] The court sentenced Respondent to three years' probation, and 60 days in the county jail, suspended, for three years. The court sentenced Respondent to serve four days in the county jail, but he was given credit for two actual days served plus two good/work credit for a total of four days. The court ordered Respondent to attend a First Offender program for three months and pay a fine of $1,690.

The OCTC took no disciplinary or other action against Respondent after his October 30, 2014 conviction.

In July 2017, Respondent and his spouse, who is also an attorney admitted to practice law in the State of California, separated after 18 years of marriage, and Respondent vacated the family residence. Respondent and his spouse have three minor children.

On October 30, 2017, Respondent's criminal probation from his October 30, 2014 conviction ended.

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[2] The Criminal Minute Order, and Sentencing Order and Terms and Conditions of Probation make no mention of the enhancement for having a blood alcohol content of .15% or higher.

Second DUI Incident - December 7, 2017

Approximately five weeks after termination of his criminal probation in the first conviction, on Thursday, December 7, 2017, at 8:33 p.m., Respondent was driving his vehicle straight through an intersection when the driver of another vehicle failed to yield, when making a left turn, resulting in a collision that caused minor damage to both vehicles.

Officers employed by the Santa Barbara Police Department (SB PD) responded and suspected that Respondent was under the influence of alcohol given certain indications of alcohol intoxication, i.e., strong order of an alcoholic beverage coming from Respondent's person, bloodshot and watery eyes, and slurred speech. Respondent was arrested for driving under the influence of alcohol, based upon the traffic collision, objective indications of alcohol intoxication, and poor performance on his Field Sobriety Tests. Respondent declined the Preliminary Alcohol Screening Test.

SB PD transported Respondent to Cottage Hospital and at 9:32 p.m., Respondent provided a blood sample that contained 0.226 ± 0.010% alcohol – again more than 2.5 times the legal limit. This disproved Respondent's statements to the arresting officer that he had only consumed one Coors Light, 12 oz., that evening.

The Traffic Collision Report prepared by the SB PD concluded that Respondent's driving under the influence was the "primary collision factor of the collision," but that there was an "associated factor" of the other driver's failure to yield when making a left turn in violation of Vehicle Code section 21801, subdivision (a).

On February 28, 2018, the district attorney filed a misdemeanor complaint against Respondent alleging violations of Vehicle Code section 23152, subdivision (a) [Driving Under the Influence of Alcohol], a misdemeanor, and Vehicle Code section 23152, subdivision (b) [Driving While Having a 0.08% or Higher Blood Alcohol], a misdemeanor, with the

enhancements for having a blood alcohol content of .15% or higher pursuant to Vehicle Code section 23578 and a prior conviction within the last 10 years pursuant to Vehicle Code section 23540.

On March 2, 2018, Respondent pled guilty to a misdemeanor violation of Vehicle Code section 23152, subdivision (b) [Driving While Having a 0.08% or Higher Blood Alcohol] with enhancements of having a blood alcohol content of 0.15% or higher pursuant to Vehicle Code section 23578 and a prior conviction within the last 10 years pursuant to Vehicle Code section 23540. The court sentenced Respondent to 150 days in the county jail, with credit given for two days, and ordered that he pay $1,690. The Department of Motor Vehicles required that Respondent enroll and participate in an 18-month Multi Offender program. Respondent was not sentenced to any period of probation.

On May 31, 2018, Respondent's spouse filed a petition for dissolution of marriage with three minor children. The dissolution is pending at this time.

At trial, Respondent credibly testified that two days before his second DUI on December 7, 2017, was the 5-year anniversary of his father's death. He testified that he was "feeling sorry" for himself, experienced grief, depression, and loneliness over the circumstances of his life, and used alcohol as a "crutch" to "mask" his emotions. Respondent admitted that his conduct was "wrong" and "potentially" harmful, and that the second offense taught him that driving under the influence of alcohol is "unacceptable." Finally, he testified that driving under the influence was "plain stupidity" and that he "should have taken a cab or an uber."

Conclusions of Law

In attorney disciplinary proceedings, "the record of [an attorney's] conviction [is] conclusive evidence of guilt of the crime of which he or she has been convicted." (Bus. & Prof. Code, § 6101.) Respondent is conclusively presumed, by the record of his convictions, to have

committed all the acts necessary to constitute the crime of which he was convicted. (*In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

The issue before the court is whether the facts and circumstances surrounding Respondent's conviction involved moral turpitude or other misconduct warranting discipline.

Both the OCTC and Respondent believe that the facts and circumstances surrounding Respondent's conviction did not involve moral turpitude, but that they involved other misconduct warranting discipline.

The court agrees and finds that the facts and circumstances surrounding Respondent's March 2, 2018 criminal conviction for DUI, while not involving moral turpitude, does constitute other misconduct warranting discipline. (*In re Kelley* (1990) 52 Cal.3d 487 [an attorney's conviction of drunk driving, with a prior such conviction, does not per se establish moral turpitude and that the facts and circumstances of that conviction did not involve moral turpitude, but did involve other misconduct warranting discipline].)

Aggravation[3]

The OCTC must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.)

Multiple Acts (Std. 1.5(b).)

Contrary to OCTC's assertion, two DUI convictions do not constitute multiple acts of misconduct. (*In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263 [no aggravation for multiple acts of wrongdoing when respondent culpable of two counts of misconduct].)

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[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.

Intentional Misconduct/Bad Faith/Dishonesty (Std. 1.5(d).)

Respondent lied to law enforcement that he did not consume any alcohol in the first DUI and that he drank only one beer in the second DUI. Although his judgment may have been impaired, such dishonesty is an aggravating factor.

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

After two DUI convictions in three years, Respondent has shown indifference toward rectification of his substance abuse problem. Although he admitted that his conduct was "wrong" and "potentially" harmful, his testimony at trial indicated to the court that he has failed to appreciate the severity of his misconduct. Respondent admitted that he drank, at a minimum, six times in the past year, and that he used to drink much more than that. His behavior evidenced lack of respect for the legal system and an alcohol abuse problem. Both problems, if not checked, could spill over into his professional practice and adversely affect his representation of clients and his practice of law. (See *In re Kelley, supra,* 52 Cal.3d 487.) Thus, his indifference is a serious aggravating factor.

Lack of Candor (Std. 1.5(l).)

There is no clear and convincing evidence that Respondent showed lack of candor in his testimony to the court. Respondent testified that he does not recall what he said to the police or recall the type or amount of alcohol that he drank in the first DUI since it was so long ago. As to the second conviction, he testified that he drank beer and whiskey and that although he doesn't recall the amount, he drank consistently for four to five hours immediately preceding the accident. And he acknowledges that he probably told the police that he drank a Coors light. The court finds his testimony to be credible.

Mitigation

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

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

Due to Respondent's lack of insight and indifference toward rectification or atonement for the consequences of his misconduct, the court cannot find that Respondent's conduct is not likely to recur. Thus, Respondent's lack of a prior record of discipline in 16 years at the time of his first DUI incident in 2014 is given minimal weight in mitigation.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

The court assigns significant mitigation credit for Respondent's cooperation with OCTC because he entered into a stipulation with the OCTC admitting documents that established his culpability for other misconduct warranting discipline. His actions assisted the prosecution. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [extensive weight in mitigation given to those who admit culpability and facts].)

Good Character (Std. 1.6(f).)

Good character, attested to by a wide range of references in the legal and general communities who are aware of the full extent of the misconduct, is entitled to mitigation credit. Respondent presented credible good character evidence from seven character witnesses, two of whom by testimony and the others by declarations. Four of the witnesses are attorneys. Favorable character testimony from employers and attorneys are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) Because judges and attorneys have a "strong interest in maintaining the honest administration of justice" (*In the Matter of Brown* (Review

Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319), "[t]estimony of members of the bar . . . is entitled to great consideration." (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.)

The character witnesses have known Respondent for more than 10 years and were aware of his criminal convictions. They all praised Respondent's trustworthiness, integrity, honesty, thoughtfulness, dedication to his work, passion for justice and working "tirelessly for the rights of others," willingness to mentor interns and new attorneys, and caring for his family, including his mother and three children.

One witness wrote that Respondent is "such a contributor in his home life, work life, his neighborhood, and the larger community." Another wrote: "To know, watch and work with Mr. Amezaga is to witness a truly caring man who sincerely advocates for the indigent and accused with a full heart and an unwavering commitment to justice and fairness." (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591-592 [significant weight in mitigation given to good character testimony of three witnesses (two attorneys and fire chief)—"testimony of acquaintances, neighbors, friends, associates, employers, and family members on the issue of good character, with reference to their observation of the respondent's daily conduct and mode of living, is entitled to great weight"].)

Respondent testified that he volunteers as a soccer coach, substitute teacher, has longstanding involvement in the Latino Lawyers of Santa Barbara organization, and participates on an annual basis in fundraising efforts for United Way through the Public Defender's Office. His community service work is entitled to considerable weight. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.)

Based on the above, the court affords Respondent significant mitigating weight for his good character and pro bono work.

Extreme Emotional/Physical/Mental Disabilities (Std. 1.6(d).)

Respondent experienced stressful family crisis at the time of his DUI incidents. He was grieving his father's death on the fifth anniversary of his father's passing, caring for his elderly mother, and going through a divorce. The anniversary of his father's death was particularly difficult for him because of their very close relationship. Respondent testified that the events were devastating and that he sought alcohol to self soothe.

While his personal problems contributed to his alcohol abuse and DUIs, Respondent has not demonstrated that he no longer suffers from such difficulties and the recurrence of further misconduct is unlikely if faced with future stressors. Though he testified that driving under the influence was "plain stupidity" and that he "should have taken a cab or an uber", Respondent has shown no interest in dealing with the underlying emotional issues that triggered his alcohol abuse and subsequent DUI. Thus, Respondent's emotional difficulties merit some, but not significant, mitigating weight.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but is instead (1) to protect the public, the courts, and the legal profession; (2) to maintain the highest possible professional standards for attorneys; and (3) to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) As the review department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059.)

The standard applicable in this matter is standard 2.16(b). Standard 2.16(b) states, "Reproval or suspension is the presumed sanction for final conviction of a misdemeanor not involving moral turpitude."

Furthermore, 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.

In a conviction referral proceeding, "discipline is imposed according to the gravity of the crime and the circumstances of the case. [Citation.] In examining such circumstances, the court may look beyond the specific elements of a crime to the whole course of an attorney's conduct as it reflects upon the attorney's fitness to practice law." (*In the Matter of Katz, supra*, 1 Cal. State Bar Ct. Rptr. at p. 510.) All relevant factors must be considered in determining the appropriate discipline. (*Grim v. State Bar* (1991) 53 Cal.3d 21, 35.) It is the court's responsibility to impose a discipline that will protect the public from potential harm from Respondent. (*In re Kelley, supra*, 52 Cal.3d 487, 496.)

In reviewing the circumstances which gave rise to a criminal offense, the Supreme Court has stated, "we are not restricted to examining the elements of the crime, but rather may look to the whole course of [Respondent's] conduct which reflects upon his fitness to practice law." (*In re Hurwitz* (1976) 17 Cal.3d 562, 567.) It is the attorney's misconduct, not solely the conviction, that warrants discipline. No matter how an attorney may fare in the criminal courts, an attorney's "fitness to practice law is a matter for separate and independent consideration by the State Bar and [the Supreme Court]." (*In re Gross* (1983) 33 Cal.3d 561, 568.)

Respondent contends that a public reproval is the appropriate discipline for his misconduct, citing *In re Kelley, supra,* 52 Cal.3d 48 in support of his contention.

The OCTC urges a 30-day actual suspension with a one-year stayed suspension and a three-year probation, arguing that times have changed, citing to *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402 in support of its argument. It further submitted that *Kelley* was decided 28 years ago, and society and the law view driving under the influence of alcohol as more egregious today than as in the past.

The court agrees that the "community's interest in prosecuting driving under the influence cases has increased dramatically." (*People v. Ford* (1992) 4 Cal.App.4th 32, 38.) Accordingly, the court finds guidance in the following cases.

In *Kelley*, the Supreme Court publicly reproved an attorney and placed her on disciplinary probation for a period of three years subject to conditions which included her referral to the State Bar's Program on Alcohol Abuse. The attorney had twice been convicted of drunk driving over a 31-month period. The second conviction occurred while she was still on probation for the first conviction. The attorney participated in the disciplinary proceeding and presented evidence in mitigation, including the absence of a prior disciplinary record, extensive community service, compliance with all criminal probation conditions since her second

conviction and cooperation in the disciplinary proceedings. The Supreme Court found her behavior evidencing lack of respect for the legal system and an alcohol abuse problem. Both problems, if not checked, could spill over into her professional practice and adversely affect her representation of clients and her practice of law.

In *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, an attorney was convicted, among other things, of four separate counts of driving under the influence of alcohol over a six-year period. The review department found that the attorney's misconduct did not constitute moral turpitude, but did demonstrate conduct warranting discipline. In aggravation, the attorney was uncooperative and aggressive towards the arresting officers and had been twice disciplined in the past. In mitigation, the attorney presented compelling character evidence. The attorney was disciplined with a one-year stayed suspension, a three-year probation, and a 60-day actual suspension.

In a recent review department opinion, *In the Matter of Guillory, supra,* 5 Cal. State Bar Ct. Rptr. 402, the attorney was actually suspended for two years for one DUI conviction prior to his admission to the bar and three DUI convictions after his admission, while he was employed as a deputy district attorney. He repeatedly attempted to use his position as a prosecutor to influence the arresting officers, lied to them about his alcohol consumption, and violated his criminal probation by driving on a suspended driver's license. The court found that the facts and circumstances surrounding his crimes involved moral turpitude.

Here, the facts and circumstances surrounding Respondent's misdemeanors are not as serious as that in *Guillory* or *Anderson.* But his two DUI convictions "are indications of a problem of alcohol abuse." (See *Kelley, supra,* 52 Cal.3d at p. 495.) Yet, Respondent "has not presented persuasive evidence that he understands the extent of his alcohol problem and is truly on a path to rehabilitation. Therefore, discipline should be imposed now in an effort to protect

the public from potential harm and to preserve the integrity of the profession," in view of current societal rejection of impaired driving, especially drunk driving. (*In the Matter of Guillory, supra,* 5 Cal. State Bar Ct. Rptr. 402, 411.)

After balancing all relevant factors, including the nature and extent of his underlying misconduct and the mitigating and aggravating circumstances, the court concludes that a one-year stayed suspension and two years' probation would be commensurate with the gravity of Respondent's act and is necessary for the protection of the public, the courts and the legal profession.

Recommendations

It is recommended that Rafael Mazo Amezaga, Jr., State Bar Number 198609, 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. **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.

2. **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.

3. **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.

4. **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.

5. **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.

6. 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.

7. 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.

8. Criminal Probation

Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the

period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

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.

Multistate Professional Responsibility Examination Within One Year

It is 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.

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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 section 6086.10, subdivision (c), 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: February 14, 2019

Cynthia Valenzuela
CYNTHIA VALENZUELA
Judge of the State Bar Court

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 February 14, 2019, 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 certified mail, No. 9414 7266 9904 2111 0316 95, with return receipt requested, through the United States Postal Service at Los Angeles, California, addressed as follows:

David C. Carr
Law Office of David C. Carr
600 W Broadway
Ste 700
San Diego, CA 92101-3370

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

Charles Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 14, 2019.

Paul Songco
Court Specialist
State Bar Court