PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

FILED SEPTEMBER 12, 2011

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 09-C-12232
	)	
GARY DOUGLASS GRANT,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 173665.	)	
	)	

I. SUMMARY

In 2009, respondent Gary Douglass Grant pled guilty to one count of possession of child pornography as a felony.[1] We have classified this crime in discipline proceedings as one that does not inherently involve moral turpitude in every case, but may depending on the facts and circumstances surrounding the conviction.[2] The hearing judge found that the facts and circumstances of Grant's conviction involved moral turpitude and he recommended that Grant be disbarred. Grant seeks review, disputing the moral turpitude finding and requesting a maximum 90-day suspension as discipline for his felony conviction. The Office of the Chief Trial Counsel of the State Bar (State Bar) support's the hearing judge's decision.

[1] As a result of his felony conviction, we placed Grant on interim suspension, effective November 20, 2009, and he has remained suspended since that time. (Bus. & Prof. Code, § 6102, subd. (a).)

[2] Crimes that inherently involve moral turpitude in every case will also be referenced as crimes involving moral turpitude per se.

After independent review of the record (Cal. Rules of Court, rule 9.12), we reverse the hearing judge's moral turpitude finding based on the limited trial evidence, which did not include the alleged child pornographic images and established little more than the conviction itself. However, Grant's misconduct is serious and warrants significant discipline. We recommend that he be suspended for two years and until he shows proof of rehabilitation, fitness to practice and learning and ability in the law according to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.[3]

II. GRANT'S CONVICTION DOES NOT INVOLVE MORAL TURPITUDE PER SE

Grant was convicted of possession of child pornography in violation of Penal Code section 311.11, subdivision (a).[4] The State Bar asserts that his conviction involves moral turpitude per se because, among other things, it represents morally reprehensible conduct that generally harms children and requires lifetime registration as a sex offender. Since no California decision addresses classification of this crime for attorney discipline purposes, we look to the definition of moral turpitude, its general application to criminal sexual offenses in California discipline cases, and decisional law in other jurisdictions. We conclude that although possession

[3] Unless otherwise noted, all further references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

[4] Section 311.11, subdivision (a) states in part: "Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison, or a county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment."

of child pornography is a reprehensible crime, it does not, *in every instance*, involve moral turpitude.

" 'Moral turpitude' is an elusive concept incapable of precise general definition." (*In re Higbie* (1972) 6 Cal.3d 562, 569.) It has been described as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. [Citation.]" (*In re Craig* (1938) 12 Cal.2d 93, 97.) Some criminal convictions constitute moral turpitude per se because they are extremely repugnant to accepted moral standards (*In re Fahey* (1973) 8 Cal.3d. 842, 849), such as murder (*In re Rothrock* (1940) 16 Cal.2d 449, 454) or serious sexual offenses against children. (See *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608, 611 [felony conviction for engaging in three or more acts of substantial sexual conduct with child under age of 14 moral turpitude per se]; compare *In re Safran* (1976) 18 Cal.3d 134 [misdemeanor conviction for annoying or molesting child under 18 not moral turpitude per se].)

We do not view possession of child pornography as a crime involving moral turpitude in every case because the circumstances surrounding the conviction may vary. For example, actively searching for child pornography on the Internet, accessing it and then perusing and manipulating electronic images may constitute moral turpitude, while merely possessing child pornography after receiving it from an unsolicited source may not. A crime such as attempted child molestation clearly involves moral turpitude in every case because it demonstrates a "readiness to engage in a serious sexual offense likely to result in harm to a child," such that the conduct is " 'extremely repugnant to accepted moral standards'. . . [Citations]." (*In re Lesansky* (2001) 25 Cal.4th 11, 17.) However, not every violation of Penal Code section 311.11, subdivision (a), necessarily involves such readiness to commit a sex offense against a child,

particularly since the statute prohibits "the act of possessing child pornography, not the act of abusing or exploiting children." (*People v. Hertzig* (2007) 156 Cal.App.4th 398, 403.)

Even with serious criminal offenses such as possession of child pornography, attorney discipline is not intended as punishment for wrongdoing – that is left to the criminal courts. We note that out-of-state discipline cases do not classify possession of child pornography convictions as crimes involving moral turpitude per se, but instead look to the underlying facts and circumstances.[5] Guided by these authorities and our reasoning above, we affirm our prior classification that criminal possession of child pornography does not involve moral turpitude in every discipline case, but may depending on the facts and circumstances surrounding the conviction.

III. FINDINGS OF FACT

A. GRANT'S CONVICTION CONCLUSIVELY PROVES HIS GUILT

On April 8, 2009, Grant pled guilty to and was sentenced on one felony count of possession of child pornography, in violation of Penal Code section 311.11, subdivision (a). Grant concedes that he possessed two unsolicited electronic images of child pornography, and the criminal conviction conclusively proves his guilt. (Bus. & Prof. Code, § 6101, subd. (a); *In re Utz* (1989) 48 Cal.3d 468, 480 [conviction record is conclusive evidence of guilt].) The superior court ordered that Grant serve 90 days in jail, register as a sex offender for life and complete three years' probation with specific sex offender conditions. Grant did not appeal his conviction or sentence.

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[5] See *In the Matter of Wolff* (D.C. 1985) 490 A.2d 1118, 1119, vacated 494 A.2d 932, aff'd. (en banc) 511 A.2d 1047 (distribution of child pornography "not *per se* [crime] of moral turpitude"); *Matter of Disciplinary Proceedings Against Bruckner* (Wis. 1991) 467 N.W.2d 780 (based on facts and circumstances, importation and trading of child pornography involved moral turpitude); compare *United States v. Santacruz* (9th Cir. 2009) 563 F.3d 894, 897 (for purposes of immigration, possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B) involves moral turpitude).

Shortly after his sentencing, Grant twice violated the sex offender terms of his probation. In May 2009, he possessed adult pornography on his computer and a few months later, in September, he sent a "sex-text" from his cell phone to two women he had previously dated.

We placed Grant on interim suspension and referred his conviction to the hearing department to determine if the surrounding facts and circumstances involved moral turpitude or other misconduct warranting discipline. (Bus. & Prof. Code, § 6102, subd. (e).) A four-day trial was held in July 2010.

B. THE STATE BAR'S TRIAL EVIDENCE

The State Bar sought to prove that Grant's conviction involved moral turpitude by showing that he actively sought out child pornography, stored it in different media locations, and emailed it to other email accounts. The State Bar did not present the subject images at trial but instead offered a single witness who had viewed them – a forensic computer analyst from the Orange County District Attorney's Office (OCDA) – to establish the images as child pornography. Grant's counsel objected to the analyst's testimony on several grounds, including hearsay, improper lay opinion, oral testimony about a writing (secondary evidence rule) and due process because he could not effectively cross-examine the analyst, having never reviewed the photographs that were the very subject of her testimony. The hearing judge overruled the objections and admitted the analyst's testimony.

The analyst examined items seized from Grant's home during the criminal investigation, including a Compaq Presario Laptop, a Dell Laptop and a generic PC tower computer along with seven floppy discs and six (compact discs) CD's. The analyst found thousands of *adult* pornography images. The analyst also bookmarked 19 separate images and one videotape for the Department of Homeland Security, Immigration and Custom Enforcement (ICE) investigator to confirm the subjects' ages, referencing these images as involving "possibly minors." When the

ICE investigator did not appear at Grant's discipline trial to testify to the ages of the subjects in the images, the State Bar prosecutor asked the analyst to testify. The analyst reluctantly agreed, but cautioned: "I'm not an expert in identifying the ages of the children. That's not my job." Her testimony about the alleged child pornographic images is summarized below.

The analyst examined a video showing three females, two of whom were naked below the waist and engaged in a pornographic pose. She testified that both girls "looked like they were under 14 years of age." The analyst also viewed six images from Grant's PC tower computer of females that she thought "appeared" to be under 16 years old. These subjects were either naked or partially clothed, exposing their underwear, breasts or pubic area. The analyst found three images stored on Grant's Compaq laptop of females who were partially clothed or naked. She testified that the subjects in the first image "appear[ed] to be about 14 to 16," in the second image "appear[ed] to be about 14 to 16" and in the third image "appear[ed] to be under 16 years of age." The analyst found approximately 4,000 adult pornographic images on Grant's CDs, and testified that nine images depicted female subjects who "appear to me to be under 16 years of age." Finally, the analyst identified a photo Grant had emailed to other AOL e-mail accounts showing two naked females in pornographic poses. The analyst opined that these subjects were under 16 years old. Throughout her testimony, the analyst repeated that she lacked any expertise to identify the ages of the subjects in the images.

C. GRANT'S TRIAL EVIDENCE

Grant testified that he is a recovering "sex and love addict." He admitted to excessively viewing adult Internet pornography for purposes of sexual arousal. Grant confessed that at the height of his obsession, he viewed adult pornography for several hours a day. Between 2001 and 2007, he collected over 100,000 adult pornographic images on each of his computers. Grant has always maintained that he received only two *unsolicited* child pornographic images when he was

using his e-mail account to gather thousands of adult pornography images. He claims he "instantly deleted" the child pornography images because he found them repugnant, but pled guilty to the criminal charge of possession of child pornography because, technically, he temporarily possessed those two images.

Grant has undergone extensive therapy since his conviction. He currently sees four mental health professionals, adheres to a psychotropic medication program, regularly participates in weekly Sex and Love Addicts Anonymous meetings and attends group therapy offered through the Lawyer Assistance Program.

Since September 2008, Grant has received cognitive behavioral therapy from James Hughes, a clinical therapist.[6] Hughes testified that Grant suffers from a serious problem with obsessive-compulsive and impulse-control behavior related to his sexuality. Hughes opined that Grant does not fit the profile of a pedophile, has no interest in child pornography and poses no danger to the public or to children. Hughes believes that Grant has "come quite a way" since he began treatment but would like to see him continue as he is "not there yet" in dealing with his chronic anxiety and obsessive behavior. Overall, Hughes described Grant's prognosis as "very optimistic" and "very good."

IV. CONCLUSIONS OF LAW

A. THE ANALYST'S TESTIMONY ABOUT THE IMAGES WAS INADMISSIBLE

The hearing judge erred by permitting the analyst to testify about the alleged child pornographic images for two reasons. First, the analyst's oral testimony was not admissible to prove the contents of the images under the secondary evidence rule. Second, the analyst's

[6] Hughes is a licensed marriage, family and child therapist, a clinical hypnotherapist, an American Psychotherapy Association Board-certified professional counselor and a sex therapist.

testimony about the subject's ages in the images was not admissible because it amounted to an improper lay opinion.

As to the secondary evidence rule, "[o]ral testimony is [generally] not admissible to prove the content of a writing" (Evid. Code, § 1523, subd. (a)[7]), since it is typically less reliable than other proof. (Cal. Law Revision Com. com., West's Ann. Evid. Code (2011 ed.), foll. § 1523, p. 1903.)[8] But by statutory exception, oral testimony is permitted "if the proponent does not have possession or control of the original or a copy of the writing and . . . [n]either the writing nor a copy of the writing was reasonably procurable by the proponent by use of the court's process or by other available means."[9] (Evid. Code, § 1523, subd. (c)(1).) We conclude, for reasons detailed below, that the State Bar did not prove it met this exception.

The State Bar prosecutor initially represented that she would offer the alleged child pornographic images at trial. The OCDA had custody of the images and agreed to submit them to the State Bar Court subject to a protective order. On June 21, 2010, two weeks before trial, the prosecutor filed a Pretrial Statement stating that she would seek to seal the images that would become part of the trial record. But the following day, the prosecutor filed a Supplemental Pretrial Statement stating that it was the State Bar's position that federal and state law restricted use of the images to criminal proceedings. The prosecutor made no effort to use the court's process, such as issuing a subpoena duces tecum, petitioning the appropriate state or federal

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[7] Writings include photographic images (Evid. Code § 250; *People v. Beckley* (2010) 185 Cal.App.4th 509, 514) and computer records (*Aguimatang v. State Lottery* (1991) 234 Cal.App.3d 769, 798).

[8] The rules of evidence are applicable in State Bar Court proceedings. (Rules Proc. of State Bar, former rule 214.) Although the Rules of Procedure of the State Bar were amended effective January 1, 2011, the former rules apply to this proceeding as request for review was filed prior to the effective date. (Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 2.)

[9] The "court's process" includes a subpoena duces tecum for the production of writings at trial. (Code Civ. Proc., § 1985; Rules Proc. of State Bar, former rule 152(e).)

court or other means to obtain the images for trial. Without making such efforts, the State Bar did not establish the exception to the secondary evidence rule that would permit the analyst to testify about the images without also submitting them at trial.

Regarding the analyst's opinion about the age of the subjects, a lay witness may testify to an opinion if it is rationally based on the witness's perception and it is helpful to a clear understanding of the testimony. (Evid. Code, § 800; e.g., *People v. Caldwell* (1921) 55 Cal.App. 280, 296 [lay opinion as to age generally received if opinion includes description of or acquaintance with subject].) The analyst admitted that she had no expertise to evaluate age beyond her common knowledge or experience. Perceptions regarding the exact age of teenagers at or near 18 years old are not within common experience, as evidenced by the analyst's tentative and unconvincing testimony. Moreover, the analyst did not describe the subjects or confirm that they were children or pre-pubescent.

Under these circumstances, reasonable minds could differ on whether the subjects in the images were actually under 18 years old, particularly since the analyst did not testify that the subjects were obviously minors. (See *People v. Kurey* (2001) 88 Cal.App.4th 840, 846-847 [expert testimony relevant to material fact of minority]; *United States v. X-Citement Video, Inc.* (1994) 513 U.S. 64, 72, fn. 2 ["opportunity for reasonable mistake as to age increases significantly" when subjects in photos unavailable for questioning]; *United States v. Katz* (5th Cir. 1999) 178 F.3d 368, 373 [expert testimony may be necessary to prove minority when

individual is post-puberty but appears young].) We conclude that the analyst's testimony about the age of the subjects lacked a rational basis and was inadmissible as improper lay opinion.[10]

B. GRANT'S MISCONDUCT WARRANTS DISCIPLINE, BUT THE STATE BAR FAILED TO PROVE THAT IT INVOLVED MORAL TURPITUDE

The hearing judge summarily found that the facts and circumstances surrounding Grant's conviction "clearly evince an act or acts constituting moral turpitude." Indeed, if the State Bar had proven that Grant sought out, collected and stored 19 images and a video of children in pornographic poses, we would agree that Grant's conviction may involve moral turpitude. But it failed in the first instance to prove that the alleged child pornographic images actually depict subjects under 18 years old. It therefore did not establish that such images were of *child* pornography. Because the analyst's testimony on the issue of age is inadmissible or not persuasive, the State Bar failed to make this preliminary showing.[11]

The remaining trial evidence consisted only of Grant's criminal conviction and his concession that he possessed two child pornographic images and twice violated probation. The State Bar never proved the specific content of those two images or where they were found in Grant's home. Nor did the State Bar prove that Grant actively searched the Internet for child

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[10] Even if we found the analyst's tentative testimony to be admissible, it does not clearly and convincingly establish that the subjects in the images were under 18 years old. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind]; see *Ballard v. State Bar* (1983) 35 Cal.3d 274, 291[all reasonable doubts resolved in favor of attorney].)

[11] Since the analyst's testimony on age was not considered, we do not address Grant's constitutional claim that he was denied due process because his attorney was unable to effectively cross-examine the analyst about the age of the subjects in the images without access to them. (See *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 230 [courts " ' "will not decide constitutional questions where other grounds are available and dispositive of the issues of the case" ' "]; *Lyng v. Northwest Indian Cemetery Protective Ass'n*. (1988) 485 U.S. 439, 445 ["A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them. [Citations.]"].)

pornography, visited child pornography web sites or joined a child pornography network, which would suggest misconduct involving moral turpitude. To the contrary, Grant claimed he did not solicit or attempt to save the two child pornography images he admits he possessed. He also denied any interest in child pornography, which was corroborated by his therapist. The hearing judge's broad finding that Grant's testimony lacked credibility does not create affirmative evidence that Grant had an interest in child pornography or sought it on the Internet. (*Edmonson v. State Bar* (1981) 29 Cal.3d 339, 343 [rejection of evidence does not create affirmative contrary evidence].) [12] We conclude that the State Bar failed to prove by clear and convincing evidence that the circumstances surrounding Grant's conviction involved moral turpitude.

V. AGGRAVATION AND MITIGATION

The State Bar must establish aggravating circumstances by clear and convincing evidence while Grant has the same burden of proving mitigating circumstances. (Stds. 1.2(b) and (e).)

In aggravation, the hearing judge found that Grant lacked candor at trial because he misled the court about his dishonorable discharge from the Army in 2009. (Std. 1.2(b)(vi).) We agree and assign this factor considerable aggravating weight. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 [great weight given to hearing judge's findings on candor]; see *Olguin v. State Bar* (1980) 28 Cal.3d 195, 200 [misrepresentation to State Bar may constitute greater offense than misappropriation].)

We adopt the three mitigating factors that the hearing judge found: (1) ongoing recovery from extreme emotional and mental health difficulties (std. 1.2(e)(iv)); (2) no prior record of discipline since admission to practice law in 1994 (std. 1.2(e)(i); *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over 10 years of practice before first act of misconduct given significant

[12] At the outset of the decision below, the hearing judge found that Grant's testimony regarding his conviction "was not credible, and at times lacked candor," but never provided the important analysis identifying what portion of Grant's testimony lacked credibility and why.

mitigating weight]); and (3) good character evidence from 10 witnesses. (Std. 1.2(e)(vi).) Grant's character witnesses were generally familiar with his conviction and spoke highly of his competency, honesty and integrity. Five of the 10 witnesses are California attorneys, whose testimony we weigh heavily since they "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.) On balance, Grant's evidence in mitigation minimally outweighs his sole yet serious factor in aggravation.

VI. LEVEL OF DISCIPLINE

The State Bar proved only that Grant possessed two unspecified child pornographic images, without establishing how he received them or where he kept them. Absent proof that Grant sought out child pornographic images, displayed sexual interest in children, or otherwise intended to harm a minor, we do not believe the facts and circumstances surrounding his conviction support a moral turpitude finding.

Nonetheless, Grant's conviction constitutes other serious misconduct for which he should receive significant discipline. (See *In re Rohan* (1978) 21 Cal.3d 195, 203-204 [other misconduct warranting discipline includes conviction that demeans integrity of legal profession and constitutes breach of attorney's responsibility to society].) The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession. To determine the proper discipline, the Supreme Court has instructed that we follow the standards "whenever possible" (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11) because they promote " ' "the consistent and uniform application of disciplinary measures." ' [Citation.]" (*In re Silverton* (2005) 36 Cal.4th 81, 91.)

Standards 3.4 and 2.6 apply here. When an attorney's criminal conviction does not involve moral turpitude but does involve misconduct warranting discipline, standard 3.4 requires

that we look to other standards for comparable misconduct. We find standard 2.6(a) is most relevant: failing to uphold the law "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim . . . ."

In light of the broad range of discipline under these standards, we look to comparable case law. (*In re Brown* (1995) 12 Cal.4th 205, 220-221.) Since California law does not provide guidance for cases involving simple possession of child pornography, we examine discipline for other sexual offense convictions in California. These cases reveal a broad range of discipline from reproval to disbarment, depending on the circumstances surrounding the crime, such as whether it was a felony or misdemeanor, whether the victim was a child, or whether the attorney participated in therapy.[13]

Viewing the facts and circumstances unique to Grant's conviction, and considering his mitigation evidence, we recommend a lengthy suspension and reinstatement proceeding rather than disbarment. We wish to be clear – we view possession of child pornography as serious and reprehensible misconduct. However, as discussed, the State Bar did not prove that the facts and circumstances surrounding Grant's criminal offense for possessing two child pornographic images involved moral turpitude. Grant was duly punished by the criminal court for his wrongdoing and we believe he should receive significant attorney discipline, particularly since he twice violated his criminal probation and demonstrated a lack of candor in these proceedings. We therefore recommend that to protect the public and the profession Grant be actually suspended from the practice of law for two years and reinstated only if he establishes his

[13] See e.g., *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. Bar Ct. Rptr. 201 (public reproval for misdemeanor solicitation of lewd act in public); *In re Safran, supra,* 18 Cal.3d 134 (three-year stayed suspension for two counts of misdemeanor annoying or molesting a child under 18 involving moral turpitude based on facts and circumstances and where attorney participated in psychiatric treatment making recurrence of misconduct remote); *In re Lesansky, supra,* 25 Cal.4th 11 (summary disbarment for felony lewd act on child involving moral turpitude per se since it demonstrated readiness to engage in serious sexual offense likely to harm child).

rehabilitation, fitness to practice, and learning and ability in the law, as required in a standard 1.4(c)(ii) proceeding.

VII. RECOMMENDATION

We recommend that Gary Douglass Grant be suspended from the practice of law for three years, that execution of that suspension be stayed, and that Grant be placed on probation for three years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first two years of his probation with credit given for the period of interim suspension that commenced on November 20, 2009, and remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

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

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

4. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

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

6. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending Ethics School.

7. He must obtain psychiatric or psychological treatment from a duly licensed psychiatrist, psychologist or clinical social worker, at his own expense, a minimum of twice per month

and must furnish evidence of his compliance to the Office of Probation with each quarterly report. Treatment should commence immediately and, in any event, no later than 30 days after the effective date of the Supreme Court's final disciplinary order in this proceeding. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final. If the treating psychiatrist, psychologist or clinical social worker determines that there has been a substantial change in Grant's condition, Grant or the State Bar may file a motion for modification of this condition with the State Bar Court Hearing Department pursuant to rule 5.300 of the Rules of Procedure. The motion must be supported by a written statement from the psychiatrist, psychologist or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

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

VIII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Gary Douglass Grant be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

IX. RULE 9.20

We further recommend that Gary Douglass Grant be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

X. COSTS

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

XI. ORDER

Since we do not adopt the hearing judge's disbarment recommendation, we order that Grant's involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), be terminated, effective upon service of this order. However, pursuant to our October 28, 2009 interim suspension order, effective November 20, 2009, Grant remains suspended and not entitled to practice law pending final disposition of this proceeding.

PURCELL, J.

WE CONCUR:

REMKE, P. J.

EPSTEIN, J.